UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Case No. 08-13555 (JMP)
- -x
In Re:

LEHMAN BROTHERS HOLDINGS, INC., et al.,
Debtors.

- -x

United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004

April 26, 2012
10:00 AM

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

Debtors' One Hundred Tenth Omnibus Objection to Claims (Pension Claims)[Docket No. 15010]

Debtors' One Hundred Eighty-Sixth Omnibus Objection to Claims (Mis classified Claims) [ECF No. 19816]

Debtors' Two Hundred Eighteenth Omnibus Objection to Disallow and Expunge Certain Filed Proofs of Claim [ECF No. 20107]

Motion to Reconsider FRCP 60 or FRBP 3008 filed by William Kuntz III [ECF No. 22236]

Debtors' Two Hundred Thirteenth Omnibus Objection to Disallow and Expunge Certain Filed Proofs of Claim [ECF No. 20102]

Debtors' Two Hundred Fourteenth Omnibus Objection to Disallow And Expunge Certain Filed Proofs of Claim [EeF No. 20103]

Debtors' Two Hundred Fifteenth Omnibus Objection to Disallow and Expunge Certain Filed Proofs of Claim [EeF No. 20104]

Debtors' Two Hundred Sixteenth Omnibus Objection to Disallow and Expunge Certain Filed Proofs of Claim [EeF No. 20105]

Motion of JPMorgan Chase Bank, N.A. to Strike Portions of the

Objection to Proofs of Claim No. 66462 Against Lehman Brothers Holdings Inc. and No. 4939 Against Lehman Brothers Inc. Regarding Triparty Repo-Related Losses [ECF No. 25782]

Debtors' Twenty-Eighth Omnibus Objection to Claims (Valued Derivative Claims) (ECF No. 9983]

Debtors' Thirty-Fifth Omnibus Objection to Claims (Valued Derivative Claims)(EeF No. 11260]

Debtors' Sixty-Third Omnibus Objection to Claims (Valued Derivative Claims)[EeF No. 11978]

Debtors' Seventy-First Omnibus Objection to Claims (Valued Derivative Claims)[EeF No. 13230]

Debtors' Eighty-Fourth Omnibus Objection to Claims (Valued Derivative Claims)[EeF No. 13955]

Debtors' Ninety-Second Omnibus Objection to Claims (No Blocking Number LPS Claims) [ECF No. 14472]

Debtors' Ninety-Fifth Omnibus Objection to Claims (Valued Derivative Claims)[ECF No. 14490]

Debtors' Ninety-Sixth Omnibus Objection to Claims (Duplicative LPS Claims) rEeF No. 14491]

Debtors' Ninety-Seventh Omnibus Objection to Claims (Insufficient Documentation) rEeF No. 14492]

Debtors' One Hundred Third Omnibus Objection to Claims (Valued Derivative Claims) [ECF No. 15003]

Debtors' One Hundred Eleventh Omnibus Objection to Claims (No Liability Claims) [ECF No. 15012]

Debtors' One Hundred Twelfth Omnibus Objection to Claims (Invalid Blocking Number LPS Claims) [ECF No. 15014]

Debtors' One Hundred Seventeenth Omnibus Objection to Claims (No Liability Non-Debtor Employee Claims) [ECF No. 15363]

Debtors' One Hundred Twentieth Omnibus Objection to Claims (No Blocking Number LPS Claims) [ECF No. 16074]

Debtors' One Hundred Twenty-Fifth Omnibus Objection to Claims (Insufficient Documentation) [ECF No. 16079]

Debtors' One Hundred Twenty-Ninth Omnibus Objection to Claims

(No Liability Derivatives Claims) (ECF No. 16114]

Debtors' One Hundred Thirty-Second Omnibus Objection to Claims (Valued Derivative Claims) [ECF No. 16117]

Debtors' One Hundred Thirty-Sixth Omnibus Objection to Claims (Misclassified Claims) [ECF No. 16867]

Debtors' One Hundred Thirty-Seventh Omnibus Objection to Claims (Valued Derivative Claims) [EeF No. 16860]

Debtors' One Hundred Thirty-Eighth Omnibus Objection to Claims (No Liability Derivatives Claims) [EeF No. 16865]

Debtors' One Hundred Fifty-Sixth Omnibus Objection to Claims (No Liability Derivatives Claims) [EeF No. 17469]

Debtors' One Hundred Fifty-Ninth Omnibus Objection to Claims (Invalid Blocking Number LPS Claims) [EeF No. 18407]

Debtors' One Hundred Sixtieth Omnibus Objection to Claims (Settled Derivatives Claims) [EeF No. 18444] Debtors' One Hundred Sixty-Third Omnibus Objection to Claims (No Liability Derivatives Claims) [EeF No. 18409]

Debtors' One Hundred Sixty-Second Omnibus Objection to Claims (Valued Derivative Claims [EeF No. 18405]

Debtors' One Hundred Seventy-Third Omnibus Objection to Claims (No Liability Employee Claims) [EeF No. 19399]

Debtors' One Hundred Seventy-Seventh Omnibus Objection to Claims (No Liability Non-Debtor Employee Claims) [EeF No. 19393]

Debtors' One Hundred Seventy-Eighth Omnibus Objection to Claims (Misclassified Claims) [EeF No. 19377]

Debtors' One Hundred Seventy-Ninth Omnibus Objection to Claims (No Liability Derivatives Claims) [EeF No. 19378]

Debtors' One Hundred Eighty-Second Omnibus Objection to Claims (Valued Derivative Claims) [EeF No. 19398]

Debtors' One Hundred Eighty-Fifth Omnibus Objection to Claims (Compound Claims) [ECF No. 19714]

Debtors' One Hundred Eighty-Eighth Omnibus Objection to Claims (Duplicative LPS Claims) [ECF No. 19871J]

Debtors' One Hundred Ninety~First Omnibus Objection to Claims (Valued Derivative Claims) (ECF No. 19888]

Debtors' Two Hundred Thirteenth Omnibus Objection to Disallow and Expunge Certain Filed Proofs of Claim [ECF No. 20102]

Debtors' Two Hundred Sixteenth Omnibus Objection to Disallow and Expunge Certain Filed Proofs of Claim [ECF No. 20105]

Debtors' Two Hundred Seventeenth Omnibus Objection to Disallow and Expunge Certain Filed Proofs of Claim [ECF No. 20106]

Debtors' Two Hundred Twenty-Eighth Omnibus Objection to Claims (No Liability Derivatives Claims) [ECF No. 20886]

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Debtors' Two Hundred Fifty-Third Omnibus Objection to Claims

(Valued Derivative Claims) [ECF No. 24117]

Debtors' Two Hundred Fifty-Fourth Omnibus Objection to Claims (Employment Related Claims) [ECF No. 25059J

Debtors' Two Hundred Fifty-Fifth Omnibus Objection to Claims (No Liability Derivatives Claims) [ECF No. 24117J

Debtors' Two Hundred Fifty-Sixth Omnibus Objection to Claims (Purchased Contract Claims) rECF No. 24933J

Debtors' Two Hundred Sixty-First Omnibus Objection to Claims (No Guarantee Claims) [ECF No. 24995J

Debtors' Two Hundred Sixty-Sixth Omnibus Objection to Claims (Valued Derivative Claims) [ECF No. 25000J

Debtors' Two Hundred Sixty-Eighth Omnibus Objection to Claims (Duplicative Claims) [EeF No. 26189]

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Debtors' Two Hundred Forty-First Omnibus Objection to Claims (No Liability Claims) [EeF No. 23247]

Lehman Brothers Holdings Inc.'s and Creditors Committee's Objection to Claim No. 67911 (the "Objection") [EeF No. 27050]

Debtors' Objection to Proof of Claim No. 66099 Filed by Syncora Guarantee, Inc. [EeF No. 20087]

Debtors Objection to Proof of Claim Number 29702 [EeF No. 20100)

Transcribed by: Petra Garthwait, Michelle George and Don Cohen

A P P E A R A N C E S :

WEIL GOTSHAL & MANGES LLP
Counsel for the Debtors
767 Fifth Avenue
New York, New York 10153

BY: MARK BERNSTEIN, ESQ.
BY: GARRETT A. FAIL, ESQ.

WILLIAM KUNTZ III, In Propria Persona

YOUNG CONAWAY STARGATT & TAYLOR, LLP
Counsel to Daryani Family
Rodney Square
100 North King Street
Wilmington, DE 19801

BY: DAVID R. HURST, ESQ.

THE LAW OFFICES OF TALLY M. WEINER
19 West 72nd Street, PMB 350
New York, NY 10023

BY: TALLY M. WEINER, ESQ.

MOSES & SINGER, LLP
The Chrysler Building
406 Lexington Avenue
New York, NY 10174-1299

BY: JAMES M. SULLIVAN, ESQ.

VENTURINI & ASSOCIATES
230 Park Avenue, Suite 545
New York NY 10169

BY: AUGUST C. VENTURINI, ESQ.

FLEMMING ZULACK WILLIAMSON ZAUDERER LLP
One Liberty Plaza
New York, NY 10006-1404

BY: WOLFGING A. DASE, ESQ.

PRYOR CASHMAN LLP
7 Times Square
New York, NY 10174-1299

BY: PATRICK SIBLEY, ESQ.

WILMER HALE PICKERING HALE and DORR, LLP
399 Park Avenue
New York, NY 10222

BY: CHRISTOPHER W. CARRION, ESQ.

MARIANNA UDEM
151 West 48th Street, 4th Floor
New York, NY 10036

BY: MARIANNA UDEM, ESQ.

WACHTELL LIPTON ROSEN & KATZ
51 West 52nd Street
New York, NY 10019-6150

BY: HAROLD S. NOVIKOFF, ESQ.

KASOWITZ BENSON TORRES & FRIEDMAN LLP
1633 Broadway
New York, NY 10019

BY: ROSS G. SHANK, ESQ.

QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017

BY: ERICA P. TAGGART, ESQ.

By Telephone:

GENOVESE JOBLOVE & BATTISTA, P.A.
100 SE 2nd Street, 44th Floor
Miami, FL 33131

BY: BARRY P. GRUHER, ESQ.

HUGHES & HUGHES
25 de Mayo 455
11000 Montevideo
Uruguay

BY: ANDRES HAM

FOK YIM-SHEUNG FLORIA, In Propria Persona

ANTONIO BRICENO, In Propria Persona

ALBERTO BENSION, In Propria Persona

DAVID ALPIZAR, In Propria Persona

FRANK COLE, In Propria Persona

P R O C E E D I N G S

THE COURT: Good morning. Be seated, please.

MR. BERNSTEIN: Good morning, Your Honor, Mark Bernstein from Weil Gotshal & Manges on behalf of the Lehman Chapter 11 debtors. Before we get to the items on the agenda, given where we are on the cases and the effective date has recently passed, and the first distribution was recently made, with the Court's permission I'd like to -- I propose giving a very brief status update on the claims' reconciliation process.

THE COURT: Okay.

MR. BERNSTEIN: During these Chapter 11 cases, there have been more than 68 thousand claims filed or scheduled, asserting claims of more than $1.3 trillion. As of April 23, 2012, there are approximately 35 thousand claims filed or scheduled, remaining on the claims register, asserting claims of approximately $493 billion. So there's been substantial progress made reducing the amount of filed claims. The reductions result primarily as a result of various settlements that have been entered into with numerous creditors, and the filing of more than 290 omnibus objections to claims seeking to disallow, reduce and allow, or reclassify claims at this point.

A hundred and 18 of those omnibus objections are still pending with respect to at least one claim on each of those, and in the aggregate there's 1,583 claims still pending on omnibus objections in the aggregate amount of $46 billion. In

total, there are approximately 10 thousand claims asserting approximately $188 billion that are, or may be disputed by the debtors.

On April 17th, the debtors made their initial distributions. The distributions were made on 23,883 claims, asserted in the -- or allowed in the amount of $303 billion in connection with that distribution. So, as you can see there's still a significant amount of work left to do in order to get the claims register aligned with the appropriate liabilities of the debtors, and as a result, with the Court's permission, going forward we would request the opportunity to schedule certain claims matters on the Lehman's regular omnibus hearing dates, to the extent there are no other larger, complicated matters on those dates.

THE COURT: That's fine.

MR. BERNSTEIN: Thank you.

With that, we'll turn to the agenda. We have three uncontested items for this morning, and then several contested items, and there's another contested item scheduled for 11 o'clock on a JPMorgan claim.

THE COURT: I have a procedural question with respect to the 11 o'clock calendar in particular. It may be that this won't be an issue because we may have everything resolved by 11 o'clock, but assuming that the 10 o'clock calendar may run past 11, is it your contemplation that we

would simply continue with the 10 o'clock calendar and have the JPMorgan matter await the resolution of that calendar, or would we take a break?

MR. BERNSTEIN: I -- I think it depends on where things are. If it seems as if the -- the 10 o'clock matter is going to require a significant longer period of time; when we get to 11 o'clock perhaps it would make sense to take a break, although I think the JPMorgan matter, I've been told, may take up to an hour as well of argument, but if we are seem like we're getting close to resolving the 10 o'clock calendar it probably makes sense just to continue.

THE COURT: Okay. Let's just see where we are.

MR. BERNSTEIN: Okay.

The first item on the agenda is the debtors' 110th omnibus objection to claims. This objection sought to disallow claims that were filed based on pension obligations of LBHI -- there was this -- LBHI settled its obligation on its pensions with the PBGC early in the case, and as a result, there has no further liability for these claims. One response remained on this omnibus objection filed by Doris Phillips. We have spoken with Doris Phillips, and she, at this time no longer wishes to pursue her response to the objection and consents to the claim being disallowed. So, with that we request Your Honor grant an order disallowing the claim of Doris Phillips.

THE COURT: It's disallowed on consent.

MR. BERNSTEIN: Thank you.

The 186th omnibus objection to claims sought to reclassify certain claims that were filed as secured claims to unsecured claims. There are a number of remaining claims on this objection and we have been discussing them with the various claimants. Most of the claims that relate -- that remain on this objection were filed by Deutsche Bank, in its capacity as indentured Trustee for numerous securitizations. We have worked on and agreed to some additional language to the order with Deutsche Bank, and I have blackline of the order, if I may hand it up to Your Honor.

THE COURT: Please.

MR. BERNSTEIN: As indentured Trustee for these securitizations, Deutsche Bank was granted a lien by the securitization Trust over the assets in the securitizations, and this language makes clear that the reclassification of the claim against Lehman Brothers has no effect on the lien that Deutsche Bank has on the assets of the securitization Trust or any rights that they have with respect to those assets. With that, we have a consensual order, and request Your Honor grant the 186th omnibus objection as to the claims of Deutsche Bank.

THE COURT: It's granted on consent.

MR. BERNSTEIN: Thank you, Your Honor.

The last uncontested item is the debtors' 118th omnibus objection to claims. This relates to certain

securities for which it was asserted that LBI issued a guarantee of the security. This is the same subject matter that would be heard on the contested calendar later today. The initial objection initially sought to disallow the claims, or alternatively to reclassify the claims as equity interests. In this particular creditor objected to having their claim disallowed, but agreed to an order reclassifying their claim as an equity interest in the debtor. As a result, we've modified the order to provide that their claim will only be reclassified, and as such we're going forward and uncontested with respect to this one particular creditor.

THE COURT: That objection is granted as to that particular creditor, on consent.

MR. BERNSTEIN: Thank you.

The next item on the agenda is the first item on the contested calendar, and that is the motion of William Kuntz III to reconsider the Court's prior order and opinion disallowing and expunging his claims. I believe Mr. Kuntz is in the Courtroom today.

THE COURT: Mr. Kuntz, it's your motion.

MR. KUNTZ: Good morning, Your Honor.

THE COURT: Good morning.

MR. KUNTZ: I'd like to say I'm happy to be back here, although I left rather early. The reason for bringing this motion is explained in my papers as based part on your

denying my evidentiary hearing, and also at the close of the last hearing, as you may recall, and Mr. Weisman's not here -- Mr. Weisman handed up a document to Your Honor, which was unmarked and uncirculated. Now that's in -- in contrast to my effort at a previous part of the claims objection hearing to have a document marked. I don't know what that document was. I'm assuming it relates to Grand Union, whatever, and I draw Your Honor's attention to my Exhibit 4, of which I faxed the entire fee application of Weil Gotshal in 1998, which was paid over $400 thousand in fees in New Jersey in the Grand Union case. And all this time is -- where is its escrow account? We don't know anything about Grand Union. You know, why are in Lehman Brothers. And, you know, I didn't bother to file the full fee application with my affidavit or with the motion, but I think it's pretty clear that Weil Gotshal was co-counsel, and that's supported by the letter opinion of Judge Martini, Weil Gotshal was co-counsel in New Jersey, in Grand Union when this $3 million escrow account went down one rabbit hole and came up another rabbit hole.

In any event, the reason I'm bringing this motion is to resolve the inconsistencies as far as Mr. Weisman handing up the document, and also so I'm in a better position to proceed before the appeal with Judge Reinhold.

I'd like to also apologize to Mr. Bernstein; I left his N in a correspondence that I sent to him, and aside from

that there's some infirmities in their proofs of service relating to facts, numbers, and so forth, but I won't bother Your Honor with that.

THE COURT: Why are you pressing this now? I mean, this decision that you're seeking to have me reconsider was decided November 10 of 2010.

MR. KUNTZ: That's correct, Your Honor, and a --

THE COURT: And then --

MR. KUNTZ: -- motion was filed within one year, and it was noticed for today.

THE COURT: Okay.

MR. KUNTZ: And --

THE COURT: I recognize that, but -- but why didn't you move sooner?

MR. KUNTZ: Why did -- why did Lehman file bankruptcy? Why does anybody do anything? I mean, for instance, in the affidavit of service, Weil Gotshal is using addresses that I gave up six years before this case even commenced. You know, they -- they send out 15 or 20 express mails all over the country. They sent it to my sister's house, because they sent it to Lake Placid. They sent it to an address on Nantucket that I invented just to show their level of incompetence, and yet here we are. We don't know anything about Grand Union, and Your Honor can clearly see that they were co-counsel and there is knowledge that the firm has or

should have -- what happened to this $3 million?

THE COURT: Well, I -- I don't think that anything you're saying actually changes --

MR. KUNTZ: That's fine -- that's fine, Your Honor --

THE COURT: -- changes the merits --

MR. KUNTZ: -- that's your impression. To me, if they were co-counsel --

THE COURT: But --

MR. KUNTZ: -- in New Jersey

THE COURT: -- but you're not even --

MR. KUNTZ: -- where the money went missing --

THE COURT: -- you're actually interrupting me as I'm in the middle --

MR. KUNTZ: That may be, --

THE COURT: -- of a sentence.

MR. KUNTZ: -- Your Honor. I'll sit down and let you talk.

THE COURT: No. I'm just really proposing the kind of ordinary courtesy that exists when people talk to each other. Nothing -- I'm not asking you to sit down. I'm just asking you to give me the courtesy of allowing me to finish my sentence, without interrupting me, and I'll do the same. I won't interrupt you. Is that fair?

MR. KUNTZ: Yes, Your Honor. I understand.

THE COURT: I don't see anything in your papers that

changes the factual record that was before me at the time that I decided the decision that you're seeking to have me reconsider. So my question to you is, what did I get wrong? What is it that I did that you disagree with that you think I should change my mind? What's the reason for that?

MR. KUNTZ: Your Honor has never reached the decision or the fact whether this $3 million became estate funds at Lehman Brothers. Your Honor has never -- I mean, in -- to my understanding, Weil Gotshal never should have even brought the claims objection. Their standing is so tainted by their co-counsel relationship in New Jersey that it really constitutes professional misconduct. But I'm not complaining, Your Honor, their conduct. I'm complaining of the obvious problems that they have, and will have in District Court, when there's a decision of Judge Martini in New Jersey -- District Judge Martini saying: "Weil Gotshal's co-counsel of Grand Union." Weil is here saying, "We don't know anything about Grand Union. We don't know anything about this missing money." How, if they took $400 thousand in fees in New Jersey in the 1998 case -- and that's not even touching on the 2000 Grand Union bankruptcy, it's clear to me -- and Your Honor outlined this -- that the level of -- how should we say -- skeleton or skeletons over New Jersey that impact -- Lehman was a creditor of Grand Union. So if they were co-counsel to Grand Union, and they also represented Lehman, and that conflict was not really

exposed to Judge Winfield -- I mean -- I don't see it anywhere in there fee applications -- then these are problems. And they're not really -- they're problems among the bar and the Court. I'm simply trying to collect on promissory notes that were issued 20 years ago -- you know - $700 million was sold -- and Your Honor went around and around about the Martin Act and this, that, the other and the -- the terms of the escrow said, that if somebody has a colorable claim to this escrow greater -- and I'm being in generalities -- if my claim is greater than going back into Grand Union, then they should have gone to Judge Winfield and said, "Let's have an order. Let's have a hearing; let's have an order." Or if Judge Winfield didn't want to do it, let's go back to Judge Walsh in Delaware, who set up the escrow account, which was approved under the original plan of reorganization.

You know, because there's this question of whether Lehman -- whether these are estate funds -- I've been barred by the automatic stay from going ahead in Westchester County and getting a judgment for four or five years now. If I'd gone and sued, and Lehman, in fact, had those funds, these gentlemen here -- the whole firm would have been on me like a ton of bricks for violating the automatic stay. I didn't. I came here, I was opposed by Weil Gotshal; I was opposed by the Creditors' Committee. Their entire rationale to me is: We don't know anything about Grand Union and we don't like the

color of Mr. Kuntz' sales because he rises to the level of some knowledge that causes us concern.

All I'm doing is trying to get paid. And if the -- if the -- if the three and a half million was never Lehman estate funds, then it should have gone unclaimed to the State of New York, is my understanding. And if that hasn't been done other. Thank you, Your Honor.

THE COURT: Okay.

MR. BERNSTEIN: I'll be brief here, Your Honor. First, I'm not going to respond to any assertions by Mr. Kuntz about any violations of ethics, professional responsibility by Weil Gotshal. That's certainly nothing that's before the Court today. Weil Gotshal was -- did represent Grand Union in one of their bankruptcy cases; that's never been denied and I'm sure they filed -- we filed fee apps in connection with those cases. We're not talking about a claim against Weil; we're talking about a claim against Lehman Brothers. And Mr. Kuntz has not provided any evidence of -- of that claim that Lehman took -- received anything from any escrow account. He has added nothing new in his motion for reconsideration that wasn't in his initial papers. He's just rehashed his same fictitious arguments and suppositions, and there's no basis, under any of the sections of Rule 60(b) for -- for relief today. 60(b) should be granted only in exceptional circumstances. It is extraordinary relief. Mr. Kuntz has not met that -- that

standard. He cannot get over the burden -- and his motion should be denied. He -- he did say that a Court hasn't made a decision on whether the $3 million dollars property of the estate. Well, he hasn't provided any evidence that $3 million went to Lehman inappropriately in the Grand Union case, so I'm not sure what $3 million he's -- he's talking about, but there's -- he didn't provide any evidence, and that's what the Court found the first time around -- that the debtors' objection flipped to the burden on Kuntz' claims, and he was responsible and required to prove by a preponderance of the evidence, that he had valid claims, and he did not do so, and he has not added anything today that -- that changes that. So his motion should be denied at this point, and happy to answer any further questions Your Honor may have.

THE COURT: No, I don't have any questions of you.

MR. BERNSTEIN: Thank you.

THE COURT: Mr. Kuntz, do you have anything further?

MR. KUNTZ: In the telephone book-sized documents filed in the claims objections, Weil Gotshal included the Ravin, Greenberg Marks P.A. letter, Judge Winfield's order, and I would refer Your Honor, which to page 3 of the letter, which says -- specifically speaks about the money in the escrow account. That's their exhibit; they put that in. To stand up here and say: "Oh, we don't know anything about this escrow account," when it was their exhibit that they obtained in New

Jersey is fantastic. It --

THE COURT: Well, I think the issue, Mr. Kuntz, is not whether or not there ever was an escrow account, but some nexus between the Grand Union escrow account and anything that involves the Lehman estate.

MR. KUNTZ: Lehman had security interest in Grand Union in the 1998 case, in round numbers, over $60 million. They were paid -- it's my understanding -- out of the -- out of the distribution of the second case. See, Grand Union had three cases. Judge Walsh had one, Judge Winfield had two and three. Somewhere between two and three, the escrow account went into Grand Union, out of the escrow agent or whatever, and apparently ended up as a payment to Lehman on their security interests at the time when Weil Gotshal was representing Grand Union, and they were basically -- and I'm not sure -- I should say this correctly -- they were more or less in-house counsel to Lehman Brothers.

I mean, there's a long history of documents that I've already produced that show Weil Gotshal's relationship to Lehman Brothers -- obviously, you're hearing even today -- and on security agreements Lehman Brothers filed in Grand Union. And, I think the feeling was in New Jersey -- Judge Winfield -- and Your Honor is already aware of this -- Judge Winfield already ordered the replacement of the bond that went missing, and there was -- rather than the typical, oh out of an

abundance of caution, we come to Judge Winfield and ask for an order out of a -- and how should we say it -- out of -- out of a episode of sophistication, as I remember from the hearings yesterday in London about the phone hacking -- they chose -- just simply Grand Union, put the money in your bank account for the -- get the escrow, forget the fact that Kuntz is out there -- we will run the risk that we don't put this in front of Judge Winfield to have a hearing in New Jersey, because Kuntz might win and he might get the money, and then we would be angry that somebody got paid when we had decided that that person shouldn't have been paid.

You know, this whole case is about interest money, lending money, borrowing money and everything else. I bought these promissory notes 15, 17 years ago -- I'm simply trying to get paid, and I'm following the money trail. There was an escrow account, which would have paid me a hundred cents on the dollar. I expected a hearing in New Jersey; there was no hearing in New Jersey. I've documented, I wrote Lehman Brothers well in advance when this case commenced. I never got a response, here I am today -- I'm -- you know, Your Honor had denied an evidentiary hearing before, and I'm simply saying: "Here's the documents, here's copies of my promissory notes, here's copies of Judge Winfield's order," -- in their own exhibit they talk about this escrow fund. If it's not funds of this estate, then I shouldn't be here.

THE COURT: Correct.

MR. KUNTZ: If it's not funds of the estate. But then, there should be an order from Judge Winfield saying: "Mr. Kuntz, too bad. Go after the bank Trustees," -- which we discussed at the prior hearing, or "here's your $3 million, Mr. Kuntz -- you -- your claims are superior." I -- see, I don't understand how Lehman, as a creditor in the second bankruptcy case could even reach an escrow account created under the first bankruptcy case that they weren't a party to. I mean, if they -- if the -- if the security agreement was filed in the second bankruptcy case, the escrow sort of floated along on the top. So, without a hearing or an order from Judge Winfield or from Judge Walsh, the fact that the money went into the general operating account, as my understand of Grand Union, and came back out as a distribution to Lehman Brothers as a creditor, that money is still there. That $3 million was not sunk in the bottom of the ocean, it was put in one of Lehman's bank accounts, and that's basically -- the whole problem is that the -- the -- rather than three years ago, saying: "Yes, there was a thing -- we're going to go back over to New Jersey, we're going to ask Judge Winfield to reopen Grand Union, and have a hearing, whether this -- whether this -- dissolution of the escrow was proper -- they've had me up here making you angry for three years.

THE COURT: You haven't --

MR. KUNTZ: On the other hand, I'd like to get my money so I could --

THE COURT: Well --

MR. KUNTZ: -- go to the Bahamas.

THE COURT: I'd like it to be clear that I've had no -- you haven't been making me angry since --

MR. KUNTZ: Well, I appreciate that --

THE COURT: -- at least --

MR. KUNTZ: -- Your Honor.

THE COURT: -- November of 2010. And I don't think you've ever made me angry, Mr. Kuntz. You have confused me from time to time, and this is one of those times. I'll give this some further consideration and take this under advisement.

MR. KUNTZ: If -- may I see one more thing, Your Honor.

THE COURT: Is it relevant?

MR. KUNTZ: Yes.

If the bank Trustees, one of which U.S. Bank, which is on the creditors' committee, were not AWOL, I wouldn't be here.

THE COURT: Excuse me.

MR. KUNTZ: The -- the -- in the Hong Kong case -- the mini bond case -- I believe Your Honor's ruling was that the -- the bond holders did not have standing because it was the Trustee -- indentured Trustees that had the powers. The

two Trustees for Grand Union -- these notes. HSBC, U.S. Bank -- both represented counsel in this case, have been conspicuously AWOL for years. They've just decided, "we don't want to hear about it; it's a de minimis amount of money -- go away, goodbye."

THE COURT: If you have claims against them, you can pursue your claims.

MR. KUNTZ: Thank you, Your Honor.

THE COURT: I'm taking this under advisement.

MR. FAIL: Good morning, Your Honor, Garrett Fail, Weil Gotshal for Lehman Brothers. The next items on the agenda are the debtors' 213th, 214th, 215th, and 216th omnibus objections to claim.

All of the objections sought to disallow or subordinate the claims based on guarantees issued by Lehman Brothers Holdings, Inc. in connection with securities issued by non-debtors. These are the objections that Mr. Bernstein referred to earlier. In total, more than 15 hundred 80 claims were subject to the objections, and of these more than 14 hundred and 40 were disallowed or expunged by prior orders of the Court on hearings on these objections. In total, approximately 146 objections were interposed and received. Each of the objections opposed disallowance of the claims. Only 33 by our count, Your Honor, responded to the debtors' request to classify the claims as equity interests, as that

term is defined in the debtors' confirmed Chapter 11 plan.

On April 21st, Lehman filed an omnibus reply for each of the omnibus objections. In the reply, Lehman withdrew its request to disallow the claims for which responses had been filed. The relief requested at this hearing today, Your Honor, is solely to reclassify the majority of the claims for which responses have been filed. And I say, majority, because this hearing was -- the hearing on the objection was adjourned for three claimants holding a total of ten claims.

Lehman believes that the reply and the modified relief should resolve the bulk of the responses that were received. The reply file contained responses to each of the relevant procedural and substantive objections, and briefly, Your Honor, Lehman believes that the objection was procedurally proper. Lehman is not estopped from prosecuting the objections, and there is no ambiguity as to the subordination of the subordinated guarantee issued by Lehman Brothers Holdings, inc.

There may be parties, however, that wish to be heard, and I believe there are a number that are on the phone, and there may be some in the Courtroom today. Unless the Court prefers otherwise, I would propose going through the objections in numerical order and seeing if there are any respondents that which to prosecute their objections.

THE COURT: There's probably no other way to deal

with this other than to take each party who is appearing on their own or through counsel, and hear what they have to say. I do have some concern that this could turn out to be a very prolonged process, and I don't know whether we have sufficient time to deal with it all, in which case we may need to either adjourn a portion of today's hearing to this afternoon, but I have other obligations starting at three o'clock, or to find another day for it. But before we determine that we have a serious problem of scheduling, let's just get into it.

MR. FAIL: Thank you, Your Honor.

THE COURT: I mention this because I'm a little bit concerned about the procedure of scheduling something as potentially massive of this on a morning calendar that also includes an 11 o'clock hearing in the JPMorgan matter, and so I think we have potentially tried to put too many potatoes in one bag, but let's find out.

MR. FAIL: We're hopeful, Your Honor, that were -- we're limited to the 33, rather than the hundred and 46, and I know that we've spoken to a number of the creditors that are amongst those 33 and have reached consensus that our reply has satisfied them. The only other way to proceed is if your honor has --

THE COURT: Let's --

MR. FAIL: -- has made a determination as to the arguments that we've --

THE COURT: -- let's at least find out who we have in the class of continuing objectors who wish to be heard today. Let's start with at least finding out whose hear, and who wish --

MR. FAIL: Thank you, Your Honor.

THE COURT: -- to be heard today. Let's start with at least finding out who's here and who wishes to be heard in person, and then we'll find out who's present by telephone.

MR. HURST: Good morning, Your Honor, this is David Hurst from Young Conaway Stargatt & Taylor, representing the Daryani family. They have three claims, subject to the 214th or --

THE COURT: Please speak up.

MR. HURST: Oh. Sorry, Your Honor. This is David Hurst from Young Conaway Stargatt & Taylor, I represent the Daryani family. And they have three claims, subject either to the 214th omnibus or 216th omnibus.

THE COURT: Okay. We're just -- we're just taking attendance now.

MR. HURST: Yep.

MS. WEINER: Good morning, Your Honor, my name is Tally Mindy Weiner. I'm here for my Law Offices of Tally M. Weiner, Esquire for Alex Wong, whose claim is subject to the 216th omnibus objection -- claimant in Hong Kong. And for Lionel Dardo Occhione, a claimant in Argentina, whose claim is

subject to the 214th omnibus claim objection. Thank you.

MR. SULLIVAN: Your Honor, James Sullivan of Moses & Singer, counsel for Datsun Investments, which is a party to the 213th claim objection.

MR. VENTURINI: On the 215th objection, my name is August Venturini for creditor Lamita Jabbour.

MR. DASE: Good morning, Your Honor, my name is Wolfgang Dase, from Flemming Zulack Williamson Zauderer, representing Bank Privée, Edmond de Rothschild, with respect to the 216th omnibus objection.

MR. SIBLEY: Good morning, Your Honor, Patrick Sibley of Pryor Cashman on behalf of Bank of Valletta PLC, part of the 216th omnibus objection.

MR. CARRION: Good morning, Your Honor, Chris Carrion from WilmerHale on behalf Banque Populaire Côte d'Azur. I'm here simply to join in the arguments made by the other claimant here today, in connection with their responses to the 213th, 214th omnibus objections by debtors and also other similar objections.

MS. UDEM: Good morning, Your Honor. Marianna Udem from Neiger LLP, on behalf of Banque Safdié, now known as Leumi Private Bank, on the 216th omnibus objection.

THE COURT: Okay. That seems to be everybody who's physically present in the Courtroom. Let me ask those who are participating by telephone if you could please identify

yourselves and who you represent, or if you're appearing pro se, please just state your name.

MR. GRUHER: Good morning, Your Honor, Barry Gruher on behalf of claimant James H. Murcia. I'm appearing in connection with the debtors' omnibus objection, the 215th claim.

MR. FLORIA: Your Honor, my is Fok --Yim-Sheung Floria on debtor (indiscernible 10:39:29)--

THE COURT: You're -- you're going to have to speak because you're not coming through loud enough to be picked up by our recording equipment.

MR. FLORIA: Well enough, my name is Fok Yim-Sheung Floria on the debtors' 43 omnibus objection, case number 6-5-0, 31,32, and 33 from Hong Kong.

THE COURT: Is there anyone else on the telephone?

MR. HAM: Yes, Your Honor.

MR. BENSION: Yes.

MR. BRICENO: Yes.

MR. BRICENO: I am Antonia Briceno. I'm calling from Mexico for the case number 2-15 and the claim number is 4-9-4-8-8.

MR. HAM: Good morning, Your Honor. My name is Andres Ham. I'm (indiscernible 10:40:11)on behalf of, filing also Ortiz on objection regarding the 214th omnibus objection, claim number 4-7-4-5-9.

MR. BENSION: (indiscernible 10:40:17)

THE COURT: Whoever is currently speaking is not being heard by anybody.

MR. BENSION: Hello. Sorry. Sorry. My name is Alberto Bension. I representing also my son, Andreas Bension, we in the 215 objection.

MR. ALPIZAR: Good morning, Your Honor, this is David Alpizar, also calling from Mexico. I'm part of the omnibus objection 215, I represented myself.

THE COURT: Is there anyone else?

MR. BRICENO: I don't if you -- I am Antonio Briceno from Mexico. I am representing myself, too.

THE COURT: I --

MR. BRICENO: His name is 49-4-0-4-8-8, and we are in the omnibus 215.

THE COURT: I think we heard from you earlier in this --

MR. BRICENO: Oh. Oh. Okay, okay.

THE COURT: I only want to know if it's anybody else we haven't heard from.

MR. COLE: Yes, Your Honor. My name is Frank Cole. I'm the 213th objection. And my claim number is 37 thousand 200 and I'm representing myself.

THE COURT: Is that it? Apparently so. Okay.

I don't know how many of the people who are present

in Court through counsel and how many who are appearing by telephone, in effect will be saying the same things repeatedly and how many of the people who are wishing to speak will be saying things that are particular to them, but I do have one question, and that is, are there any facts in dispute, or is this purely a question of law?

MR. FAIL: Your Honor, from Lehman's perspectives there are -- there is no fact in dispute, with respect to the relief requested.

MR. SULLIVAN: Your Honor, James Sullivan, counsel for Datsun. One potential fact dispute -- and I've requested discovery from the debtors, but they've refused to produce any or provide any, is -- as you may recall from some of the other cases and claims objections -- Lehman has, at various points in time, issued guarantees -- although Lehman may dispute some this -- but guaranteed certain obligations of certain affiliates. And a fact issue is -- you know -- it potentially rises as to whether or not any such guarantee exists in connection with these obligations. I've made a request of the debtor to represent whether or not any such guarantees exist, and I'm not getting -- you know -- they've refused to provide anything in writing responsive to that question. So I would like an opportunity to take some limited discovery on that issue to determine whether or not there's any legal basis for a non-subordinated -- non-subordinated claim against Lehman

Brothers in connection with these claims.

THE COURT: My Fail.

MR. FAIL: Your Honor, Garrett Fail, for the record.

I disagree with Mr. Sullivan's characterization of his previous requests. That said, Your Honor, I'm happy make a representation to the Court today that the Lehman is aware of no fact or circumstance or argument in law that would prevent it from prosecuting its objection, which it intends to do today. There is a subordinated guarantee in place, and Lehman is not aware of any other guarantee, which would cover Lehman Brothers UK Capital Funding for LP's obligations or Lehman Brothers UK Capital Funding Five's LP's obligations from Lehman Brothers Holdings Inc.

And Your Honor, I don't believe -- Lehman doesn't believe that discovery on this or any other plan would reasonably or yield any evidence that would be relevant. One additional point -- Datsun's claim -- the amount of the claim, just for perspective, is 237 thousand 304 dollars and 48 cents. Disclosure statement -- enough, Your Honor -- or are you requesting -- okay. Disclosure statement estimates for such claims are 11 and a half percent, which would yield, over time, would yield 27 thousand 290 dollars. I think the cost of any discovery would outweigh any -- any recovery that Datsun would obtain.

THE COURT: Okay, there is a question that occurs to

me that involves the adjournment of at least one of the matters originally scheduled for today in reference to a partnership agreement. I do not know what that's about, and I do know that a call came in to chambers from a claimant requesting an affiliated file -- a supplemental memorandum. I'm frankly confused as to whether or not the issue giving rise to that request applies only to that claimant, or applies across the board to a class of claimants. Can you provide me with some guidance on that?

MR. FAIL: Your Honor, speaking for -- for Lehman Brothers, and not for the claimant -- but our understanding -- having spoken to the claimant, as well, is that the request doesn't apply to anybody currently, because the argument being asserted relates to an argument that the debtors have withdrawn. Lehman is no longer prosecuting an objection at this time to disallow the claims. The partnership agreement and -- and clauses of it, or pieces of it that the claimant wants to refer to are in response or related to -- may have something to do, or may not in our perspective, have to do with the basis for which Lehman sought to disallow the claims. Lehman is not seeking to disallow the claims. We don't believe a partnership agreement is relevant to the requests to enforce the explicit, clear subordination that's in the subordinated guaranteed from LBHI. The partnership agreement is not relevant to this, from Lehman's perspective.

THE COURT: Okay.

Well, let's just -- let's just proceed. We have -- by my count -- eight -- and I may have miscounted -- attorneys in Court and we have another seven or eight parties on the telephone. At some point I suspect this will become repetitious, but I don't know that until we start the process. And so, why don't we just go in the very same order that people had first identified themselves, and present your arguments, and to the extent that they begin to overlap, presumably we'll be able to get through this. If it becomes time consuming and begins to impinge upon the 11 o'clock calendar we may have to adjourn this to another date.

MR. HURST: Good morning, Your Honor. David Hurst from Young Conaway Stargatt & Taylor, representing the Daryani family. As I mentioned initially, when I first stood here, we have three claims; total claims amounts about 2.1 million, subject to the 214th or the 216th omnibus objections.

The two points I'll make out of my papers, Your Honor. The first point is -- that's a subordinated guarantee that's the basis for the claim objection; it's not a signed document. It may seem like a minor point, but everything that's going on here today is based on a document, which is not signed by anybody; it's a -- could be a draft, it could be a different version -- I don't really know. But this is a case where a couple of words could mean a big -- could make a big

difference, okay. So our view is, unless the debtors can produce the actual document -- the true governing document, they haven't overcome the, you know, prima facie validity of the claims that have been filed, including my clients' claims. Second point, Your Honor:

Even assuming that the documents before the Court do govern this -- do govern this matter, we don't think there's a basis to subordinate us or to reclassify us as equity interest. And I'm basing this argument -- and really on just the debtors' own language. In the -- in the reply filed by the debtors, they have a couple interesting sentences in there -- in the matrix that was attached to the 214th omnibus reply. I'll just read those into the record:

"The subordinated guarantee claims are being characterized as equity interest for distribution purposes under the plan to enforce the contractual subordination. While the subordinated guarantees did not give rise to an equity interest in LBHI, claimants' right to distributions are subordinated to LBHI's other debt obligations."

You know, my reading of this, Your Honor, is that the debtors are acknowledging these are not equity interests, number one. And number two, they're saying they're subordinate to other debt obligations. So this, indeed, is a debt obligation. So there's no basis to push us into the equity class -- that's Class 12 -- so you have Class 10 a,b, and c are

subordinated classes, Class 11 is 510(b),Class 12 is the equity interests. The 510(b) claims, I assume, are being subordinated to the level of equity, if there are any -- I don't know. The way I read everything -- the documents -- is where we should be, just based on the documents before the Court -- we should be below Class 10(c)and above Class 11. And I -- again -- I recognize that it's not a -- it's not helpful, because we have a plan, but there's no way I think we should be in the class of equity interest, based on the debtors' own admissions in their papers.

Those are my two points. I'd just add one thing. As I come to the hearing today and I talk to other claimants, it does seem like there is a factual issue of whether or not there's a separate guarantee out there, and indeed I believe that some of the claimants that have been adjourned for a day came upon these facts, and that's why the debtors probably are adjourning with respect to certain claimants. I think it's unfair to have everyone else be their -- you know -- well, I guess, reclassified if there's sort of this factual issue out there. But I think everyone deserves the opportunity to investigate, because it was never raised in the debtors' papers. And it may turn out it's not meaningful, but I think an adjournment, so that people have a chance to investigate would be appropriate.

THE COURT: Well, I asked earlier whether or not

there were any factual issues, and you're telling me that, from your perspective, there are.

MR. HURST: Yes, and Mr. Sullivan-- that's, I believe, what he was talking about. So that -- yes, I do believe that's a factual issue.

THE COURT: And what facts would you be exploring?

MR. HURST: Well, the existence of a separate guarantee -- that that's the -- I mean, that's the fact, and apparently a number of claimants have begun this investigation, have obtained a partnership agreement, and are in a much better position than me, probably to articulate it to Your Honor. I'm just saying, as I stand here today I feel, you know, uncomfortable that these -- nothing comes up in the debtors' papers, so it wasn't what I addressed when I filed my response. If it's truly something else going on that I'm unaware of, you know, I'd least like to have the opportunity to investigate it.

THE COURT: Okay. I understand that.

MR. HURST: Thank you, Your Honor.

THE COURT: Thank you.

Before we go to the next person, I'm just going to comment generally to the people that are on the telephone. You probably don't know who are, but we have heavy breather on the telephone, and so I'm going to ask all of you -- and you to have to acknowledge who you are -- to mute your phones or at least to move the speaker away from your nose. Do we have

anybody else in Court to speak? You're to speak in the same order in which you presented yourself before, and you look like -- you look like a new face to me.

UNKNOWN VOICE #1: No, I think I was fourth.

MS. WEINER: Ah. Good morning again, Your Honor. I joint Mr. Hurst in asking for an adjournment. I'd like to point out something -- I'll be brief -- that occurred to me in hearing the debtors' presentation, which is that they came after some 15 thousand claims here, saying that they should be disallowed and equitably subordinated. They're not asserting that they withdraw their request for a disallowance. Just the way these claim objection procedures work, Your Honor has entered orders knocking out 14 thousand claims. Had people filed responses, they wouldn't have disallowed, but I think it is understandable, and you get it listening to people on the phone, what a hardship it is to file responses on time. I'm not sure what the right procedure is, but I would ask Your Honor to adjourn in order to give people an opportunity to get those orders withdrawn. I don't think those claims should've been disallowed. Weil Gotshal is now moving forward with its disallowance. Thank you, Your Honor.

THE COURT: Well, I hear what you're saying, but what you're saying is inconsistent with the procedures that have been applied in this case now for years. You're not speaking on behalf of a class of unrepresented third parties

whose claims have all been disallowed in the last two years, are you?

MS. WEINER: I don't know that I -- that I can, Your Honor --

THE COURT: Right. I don't think you can --

MS. WEINER: I -- I should very much like to, but this is a Court of Equity, and I know you are committed to a clean and transparent process in this case. I think there is something just fundamentally wrong with 14 thousand claims getting knocked out.

THE COURT: As long as parties had notice and had an opportunity to be heard, that's all the law requires.

MS. WEINER: Ah, perhaps Your Honor. I'll tell you, having filed responses for parties who got very short notice, because they got documents sent to them in Hong Kong and Argentina -- that it's very difficult. And I can certainly understand why some people did not respond. But, in any event, I would ask for an adjournment. Thank you.

THE COURT: Okay.

Is there anyone else who wishes to be heard who is present in Court?

MR. VENTURINI: Yes, Your Honor.

My name is August Venturini for claimant Lamita Jabbour on the 215th omnibus objection. Very briefly, Your Honor, there's no grounds to reclassify the guarantee

obligations as debt or equity interests for a number of reasons. Number one is that the debtors have conceded that the guarantee obligations, under the terms of the guarantee, are senior to common stock. What they do try to do is they try to hang onto to this pari passu language in the guarantee, which says these obligations are pari passu with parity securities. And in the definition of parity securities we maintain in our papers is circular and vague and ambiguous, and therefore, unenforceable, because it basically says that it's on a pari passu basis with any other security that's pari passu with it. And the debtors have not come up with any other security that says it -- it's pari passu with ours, except for the other guarantees -- they're all in the same boat. So, in other words, there's no connection between the obligations, under the guarantee, with preferred stock or any securities -- oh, I'm sorry -- any common or preferred stock, which would then allow the debtors to lump the guarantee obligations into the equity interests as defined under the plan, because the equity interests in the plan are defined as common and preferred. So because there's no nexus to tie the guarantee obligations to preferred stock, then there's no basis to claim that these are equity interests. Now, there is certainly a claim that there's subordinated guarantees and -- and the question would be, well if they are subordinated they are still senior to the common stock, which is clearly going to guarantee and clearly conceded

by debtors in this matter. I -- I would draw on my papers in terms of the analysis of parity securities -- it's set forth pretty well there.

THE COURT: What happens to these claims and, assuming I accept your argument, do they end up as unclassified junior claims and if so, what treatment are they entitled to?

MR. VENTURINI: Two arguments to tell Your Honor. First is that we're saying that the whole subordination agreement is ambiguous because it relates to the parties' securities and therefore is unenforceable.

Secondly, or in the alternative, if the Court accepts that there is a lease of subordination element but were senior to common stock than there should have been some type of class to account for us -- to account for our claims and those claims would be before equity interests so there would have to be another level, I suppose, that we would take after the main creditors but before the equity interests.

THE COURT: I'm not sure there is anything for you to take.

MR. VENTURINI: That's what the Debtors have told us, but nevertheless, we still think that it should be superior to the equity interests by the nature of the guarantee, I hold a clear language of the guarantees.

THE COURT: All right. Thank you.

MR. VENTURINI: Thank you.

MR. DASE: Good morning, Your Honor. My name is Wolfgang Dase for Banque Privée Edmond de Rothschild , the 216th Omnibus Objection.

We would like to join Mr. Hurst's request for an adjournment, specifically our response incorporated by reference, the arguments of Lloyd's TSB Bank, Geneva Branch, and my colleagues, Lyle, granted them an adjournment and we respectfully submit that the issues are identical with Lloyd's and therefore the adjournment should be granted.

THE COURT: Okay. Thank you. But let me -- let me speak with Debtors' counsel about an issue before hearing from others because there are now at least three independent requests for an adjournment for varying reasons, one having to do with the possibly need to take some discovery or obtain some information, one having to do with equitable concerns, one now having to do with what I characterize as it's unfair for us to go forward today while others have been granted an opportunity to have some more time and we'll be going forward some other date, and why do we need to do this today. And so, my question, Mr. Fail, is why do we need to do this today?

MR. FAIL: Thank you, Your Honor. I think it was fitting that we had Mr. Bernstein start this morning off with a status conference regarding the number of claims that are pending objection -- the objection is pending. I believe the

number was over 100 omnibus objections out of the 290 or so that were filed remain pending with responses such as the Respondents on the phone and in the courtroom today pending. At some point, Your Honor, we need to move forward and clear those out. There will be additional omnibus objections and other individual objections coming along. As Mr. Bernstein indicated. I believe there are over 10,000 claims that remain subject to review and possible objection.

This is not the first hearing on these objections so that means that parties had from between the first hearing which was at least a month ago till today -- this wasn't sprung on anyone -- addressing the three bases that were mentioned by Your Honor just now, in reverse order if I may, objections -- the adjournments were granted not to hide anything from the Court, not to -- not out of fear from the Debtors of where the adversary -- a professional courtesy was extended to one counsel -- to counsel for Lloyd's who had a personal conflict and wasn't able to attend today. The Debtors had extended and adjourned this hearing once before and extended a professional courtesy to counsel. The fact that other counsel joined that objection doesn't replace each individual counsel's or creditor's obligation to represent their client and, I'm sure, everyone in the party was ably -- well able to do so and the arguments were set forth in someone else's pleading and, to the extent that counsel wishes to prosecute them, they may today,

address them in the equity argument, I think, Your Honor, has covered that. Notice's been provided. 30 days, I believe plus three for mailing is required by the bankruptcy rules. Lehman's practice for over three and one half years, or two and one half years, that the Claimants' process has been going, is to provide creditors with more than 30 days and we granted extensions for response deadlines and so, I have no -- I'm very confident that this Court and Lehman has treated creditors fairly and I give no weight to the equity argument.

And with respect to the discovery, Mr. Sullivan made a limited request this morning. He hasn't provided -- he hasn't handed Your Honor -- he hasn't handed counsel, he hasn't handed Lehman a discovery request that would be narrow or tailored. He seemed to say he's wondering if there are any other guarantees out there. It's very hard to prove a negative, Your Honor, but Lehman is not aware of any other guarantee other than the subordinated guarantee at issue that could give rise to liability in whatever priority or fashion for Lehman Brothers Holdings, Inc., so we don't believe that discovery would be fruitful or yield a different result. That said, the others that are joining in the request for recovery haven't contacted counsel to ask for anything in advance and so, I don't know what benefit we will achieve by -- by having an -- additional time for an adjournment, Your Honor. The costs -- the costs would certainly outweigh. I'm happy to

address the other arguments that were raised if there would -- if Your Honor wants to go through this.

THE COURT: Don't we have a minimum of law of the case problem with respect to the treatment today of your legal arguments and the responding of other similarly situated Claimants to another hearing day. Just speaking hypothetically, assuming I were to agree with every single one of the Lehman arguments concerning this matter, that means you win. And that means that, as far as the matters that have been adjourned, they necessarily must lose, because there are similarly situated. So, I'm just concerned from a case administration perspective. I'd be interested in your views on this as to how rationally we can deal with a class of claimants that is diverse in number, international in character, includes some represented by counsel, some pro se, some who are here to observe in person, some who are simply listening on crackling phone lines, how do we deal with this in a fair and reasonable way so that everybody is able at the end to have an Order which is then either accepted or is the subject to final appeal.

MR. FAIL: Your Honor, I think, the way to proceed is the way that we're doing it, not to treat these as class claims. There is no class claim before Your Honor. The Debtors filed omnibus objections to 1,500 -- it's not 15,000 -- and it was 1,400 not 14,000 that were -- were expunged, just so that we're clear on the record. It's a large case but it

should work. It's a large number, but it's not 14,000.

We're treating these individually, so there are however many parties that are here today prosecuting their objection, and I'm happy to address their arguments individually. To the extent that the parties adjourned are worried about law of the case, they haven't expressed that to Lehman and Lehman doesn't represent them. Lehman isn't arguing law of the case with respect to the objections that we're passed. We are happy to address it -- each one on the merits.

Further, while Lehman has gathered over 1,580 claims based on these two funding entities and these subordinated guarantees and while Lehman has strived for efficiency, there is no guarantee that there are not other guarantees, similar claims out there, that will need to be objected to in the future. As Mr. Bernstein indicated, there are over 10,000, I believe, claims that are yet to be reconciled and there is -- I cannot the possibility that one of those claims has the same CUSIP embedded within it and that will need to be addressed in the future, so I think, we'll have to just deal with, on a case by case basis, each -- each of the claims. There is no other -- there is no other practical way to proceed.

THE COURT: I'm not getting into the question of whether or not there may be some other claimants out there. I'm getting into something that's more fundamental, which is just this particular group, this particular identified class,

not in a class action sense, but in the sense that there are certain parties that are the subject of four currently pending omnibus objections who have responded. Some with overlapping arguments and in the case of Banque Privée and one party who has almost identical positions that has gotten the benefit of an adjournment, there is at least as to that example an issue of, what I call, fair treatment.

MR. FAIL: Your Honor, if I may though, you're flipping the argument that's being made. The parties were not at the next hearing were the Debtors' made the arguing law of the case. In that case, this conversation may be relevant. Was it fair that we went forward and they shouldn't be bound where they weren't a party. These are parties saying "wait, someone else may do the work for me. Wait because someone else may do something in the future." It's -- They are not being prejudiced by going forward and having a fair and full hearing today on the arguments. They are looking for the benefit of something else in the future, not complaining about law of the case going forward and prejudicing them.

THE COURT: No, I think, what they're basically saying is, at least some people have said "We would like an adjournment". And if it's good enough for three parties who, for whatever reason had an adjournment, why isn't it good enough for us. Why shouldn't this all be heard at the same time instead of in parts. I have, frankly, some appreciation

for that argument. I'm concerned from my perspective as to what I'm supposed to do today. Let's just assume for the sake of argument that we set aside time this afternoon and tomorrow afternoon and I'm able to get through however people are currently in person and on the phone and have things to say about this issue. Then what? Is it your position that I should rule from the bench and say "Lehman, you win"? Or is it your position that I should take it under advisement and wait until I see what others have to say in a month? What am I supposed to do with this, Mr. Fail?

MR. FAIL: There are --

THE COURT: I think what we have is an administrative problem that we share.

MR. FAIL: -- I agree with that, Your Honor.

THE COURT: And because you brought it to Court, you actually own it.

MR. FAIL: Yes, Your Honor. The Debtors' request would be that Your Honor rule from the bench in the Debtors' -- in Lehman's favor. Another alternative would be as Your Honor suggested to hear the parties that are present today with no guarantee that they would be available at the next adjourn date that everyone's schedule would be satisfied and go forward at an additional hearing. In the interim though, Your Honor --

THE COURT: Let me tell how I think we should proceed based upon where we are. I'm not going to rule today,

so that becomes easy. Administratively, however, it seems to me that everybody who has gone to the trouble of hiring counsel and having them show up today should at least the opportunity today to say what they want to say. We're not going to waste the day. Those that are on the telephone also will have an opportunity to either choose not to say anything, or if they wish to add something, to have that opportunity. But I'm not deciding this question until after the last cock has crowed. The way in having certain claims go to another day effectively would be the default decision. There will be no decision until -- there will be no decision that affects all until we've heard from all. I think that's a fair way to approach this, because that also gives those parties that are here today, if they need some more time to ask some questions, if there are questions to ask, to find out what they can find out about other guarantees that may apply. I heard what you said and I accept what you said, but presumably parties may want to ask that more directly.

MR. FAIL: Certainly, Your Honor.

THE COURT: So let's just -- let's do the following. We have an 11:00 o'clock -- it's now 11:15 -- let's take the next fifteen minutes to get to 11:30 to see what we can accomplish in that period of time. We'll then go to the JP Morgan matter and we'll adjourn till 2:00 o'clock and the parties who wish to be heard at 2:00 o'clock who haven't been

heard with respect to these claim objections can be heard at that time, recognizing that I only have an hour this afternoon for that purpose.

MR. FAIL: Thank you, Your Honor.

UNKNOWN SPEAKER TELEPHONIC: Your Honor.

THE COURT: We still have people in Court that wish to be heard.

UNKNOWN SPEAKER TELEPHONIC: May I speak for the people on the telephone.

THE COURT: We can, but -- those people who are physically present in Court are at the head of the line and then we'll get to the people that on the telephone.

MR. SIBLEY: Good morning, Your Honor, Patrick Sibley again, Pryor Cashman, on behalf Bank of Valletta. My client simply just wishes to join in all the arguments presented today. I have nothing else to add.

THE COURT: Okay.

MR. SIBLEY: Thank you, Your Honor.

MR. SHANK: Your Honor, I am a new face. My client is also joining in the responses to the omnibus objections. My name is Ross Shank, Kasowitz Benson. My client's name is Suad Salumeh (phonetic).

I am here continuing to join in the objection including the objection -- response of the Lloyd's TSB which has been adjourned.

MR. CARRION: Good morning, Your Honor, I'm Chris Carrion, again on behalf of WilmerHale, representing Banque Populaire Côte d'Azur.

I just wanted to reiterate that my client joins in the arguments of all the claimants made today. Thank you.

THE COURT: Sorry, who were your clients? Banque Populaire?

MR. CARRION: Banque Populaire.

MR. UDEM: Good morning, Your Honor. Marianna Udem, Neiger LLP, for Banque Safdié, now known as Leumi Private Bank, and I would simply like to join in the arguments already made by counsel today on behalf of my client. Thank you.

THE COURT: Is there anyone else who is physically present in Court who wishes to be heard. Okay. Begin with the telephone.

MR. ALPIZAR: Your Honor, this is David Alpizar from Mexico, and actually, we just want that we are treated like everybody else in the claims. We cannot be calling every day or every time, because this is no, you know, we are thousands of miles away and we have a life to go with, and we just wish the Court takes our petition to be treated the same as everybody else in the claims and whatever we can go by or not), we're not.

MR. BENSION: Your Honor, can I just ask for the creditors to say if it's possibly to say their claim number,

because the names are a little bit hard to hear, if it's possible.

MR. ALPIZAR: Yeah, my claim number is 4940481. David Alpizar for Mexico.

MR. BENSION: Thank you.

THE COURT: Okay. Is there anyone else who wishes to be heard is on the telephone?

THE COURT: Whoever is now speaking, I can tell you at least I'm not hearing you.

MR. BENSION: Okay, sorry, Your Honor. Alberto Bension, I'm on with my son Andreas, I'm for claims 47-4-9-5 and 96, represented, pursuing their answer, so we'll have at least our go at this case. Thank you.

MR. FLORIA: Your Honor --

THE COURT: Yes.

MR. FLORIA: My name. I'm number (indiscernible 11:18:20). The claimant's name -- Fok Yim-Sheung Floria. Case number 6-5-0-3-1-6-5-0-3-2 6-5-0-3-2. This is a claim relating to --

THE COURT: I have to break in and just say this that the way this works, we have recording equipment that accepts sounds. but the sounds have to be audible in order for the system to work and you're not speaking loud enough or the connection is not good enough for you to be heard by the equipment, so you have to really speak up.

MR. FLORIA: Yeah, Claimant's name is Fok Yim-Sheung Floria, case number 65021, 65022, and 65023 (indiscernible 11:19:12). In fact, for this matter, (indiscernible 11:19:20)about seven weeks before the deadline, September --- normally it takes about one week from Hong Kong -- and from Hong Kong to New York (indiscernible 11:19:25) approximately, which is six days after the deadline -- four days after the deadline --

THE COURT: Can I break in one, can I break in -- I have a feeling you're talking about something completely different from the issues that are before the Court today. It sounds to me as if you're talking about an objection that your claim was received late because of time spent in mailing. That's not before me today, so while you may have an argument to make, this is not the time to make it.

MR. FLORIA: (indiscernible 11:20:36) I think -- because I had (indiscernible 11:20:37) all my (indiscernible 11:20:38), seven weeks before the post date. But a couple of weeks -- for the (indiscernible 1:20:53) I don't what I'm telling (indiscernible 11:20:54) the same (indiscernible 11:20:55) seven weeks to (indiscernible 11:20:56) only take one week --

THE COURT: May I suggest that rather than dedicate time on the record with perhaps 35 people sitting in the courtroom that you have a conversation directly with Debtors'

counsel to see if you can reconcile issues relating to your claim and if you can't, you can find out when it will be heard. It's not being heard today.

Is there anyone else dealing with a particular omnibus objection that the Court is dealing with now?

MR. HAM: Yes, Your Honor, my name is Andres Ham. I'm calling from Montevideo, Uruguay on behalf of Mr. --I filed that onto a disc. The claim number is 47459.

In the first place I wanted to say that on the writ filed by the Debtors' counsel, on the 25 of April, my client is the least of people that who need a claim, but it says here that the response was received after the initial hearing date and after claimant's claim has already been expunged which is not exactly accurate because my client's response was received by way -- but it was somehow mistake -- submitted another response. The way it's already -- have already acknowledged the situation and said to us via e-mail that our response was going to be considered --

MR. FAIL: Your Honor, if --

MR. HAM: -- but I wanted to -- just to make clear that what he says here in the writ is not exactly accurate.

THE COURT: Mr. Fail, do you want to comment?

MR. FAIL: Yes, if I may, Your Honor. We recognize that with respect to this claim 47459, a response was received. It was -- the claim was, however, expunged, on the previous

Order by the Court. We acknowledged in the reply that we were treating it as if it -- the reply had been received to the extent that the Order is not granted -- to the extent that Your Honor agrees with the Debtor and Lehman currently and were to reclassify the claim, we would contact Epic and have the claim restored to the claim's registry and reclassified as equity. To the extent that Your Honor orders otherwise, we'll contact Epic and arrange for that. It was inadvertently expunged rather put it back as a regular claimant and move it subsequently we chose to deal with it this way.

THE COURT: So for purposes of the pending motions, even though this particular claim has been expunged, it would be treated as if it has not been expunged for purposes of whatever relief my apply to the class of claims affected by any order I may entered.

MR. FAIL: I wish I could have said it that clearly, yes, Your Honor.

MR. HAM: Thank you, Your Honor, and having said that, I want to join the arguments of the claimants that have been disposed today on behalf of Mr. Rafael, also.

THE COURT: Okay, thank you.

Is there anyone else who wishes to be heard on this question, and, by the way, what I think I am hearing as a pattern, and I can make this statement for everyone who's on the phone is that everyone who is on the phone wishes to be

treated equally and basically adopt all of the arguments that other parties have made as to why their claims should not be reclassified. I believe that is probably a common theme. I don't wish to put my words in your mouth, but to the extent that you agree with what I've said, you can just say that and we can then probably close this phase of the hearing.

MR. ALPIZAR: I agree, Your Honor, I'm David Alpizar, case 49481.

MR. BENSION: I agree, Your Honor. Case 4-7-4-5-9. Mr. Rafael Alonso Ortiz.

MR. BRICENO: Your Honor (indiscernible 11:25:49), Antonio Briceno, case 4-9-4-9-7-4-8-8.

MR. BENSION: Alberto Bension, (indiscernible 11:26:00), Your Honor, case 47-49-5 and 6.

MR. COLE: I thank, Your Honor. My name's Frank Cole. My case number is 7-0-2-0. Thank you.

THE COURT: Now I'm not going to assume that silence is agreement. So is there anyone on the phone who wishes to say something in addition to a general statement I made which attempted to summarize what I believe I have been hearing from everybody. Is there anything in addition -- additional, that anyone wishes to add at this point?

MR. HAM: I would like to add one more thing, Your Honor. Anyone that fails to call is not taken as a withdrawal.

THE COURT: I'm sorry I didn't understand that

point.

MR. HAM: Well we are in countries away and if we cannot call that doesn't mean that we are withdrawing our claims.

THE COURT: Okay, I understand.

Here is what I think makes sense at this point. Unless there is someone in Court who wishes to speak at this juncture, I'm going to treat this as, effectively, oral argument with respect to the written positions that have been submitted by the various parties who are affected by these four omnibus objections. I'm also going to treat all of the objections as if they're being made on behalf of all of the objectors. I'm not going to segregate, for example, an argument about ambiguity and treat that as applicable to only the objector who raised that point, because in dealing with this issue, effectively, with what is a legal question. And so everybody is going to -- everybody who is objecting to the omnibus treatment is going to be supporting one another and their arguments will apply across the board. That said, I'm deciding this question until we've heard from the group to be heard at the omnibus hearing or whenever their claims are to be heard and it is more likely than not that I will take this under advisement and I need to reflect on this rather than simply rule from the bench. And, during the interval between this hearing and the next hearing on these objections, and Mr.

Fail, do we have a date?

MR. FAIL: Your Honor, the next claims hearing is May 31. I'm not sure what's scheduled for that calendar or what's on for the omnibus hearing in the interim.

THE COURT: Well, I don't know what arrangements have been made with those attorneys who requested adjournments, but I'm assuming that they'll be heard on a common date. Well the parties who participated in today's hearing will have notice of that date and will have an opportunity, should they wish to participate to participate, either to listen or to make additional comments.

Moreover, to the extent that any party has a desire for targeted discovery of an informal nature with regard to the existence of guarantees that may be applicable to these claims, I presume that that will take place during the interval between this hearing and the next hearing, whenever that is, so that, at least at that point, we'll not have any issues of unanswered questions and I will suggest, that at the next hearing, those attorneys in particular who wish to make legal arguments will have an opportunity to make those arguments for a last and final time before this -- this is to be decided. So this will be adjourned to that date to be determined. Notice will be provided. We'll take a five minute break. Those who wish to leave may leave. The attorneys who are involved in the JP Morgan matter can come forward and I'll see you in five

minutes.

MR. FAIL: Thank you, Your Honor.

(Whereupon the Court recessed till 11:42 A.M.)

THE COURT: Be seated, good morning.

MR. NOVIKOFF: Good morning, Your Honor, Harold Novikoff, Wachtell, Lipton, Rosen & Katz on behalf JP Morgan Chase Bank.

We are here today on JP Morgan's Motion to Strike certain of the objections contained in LBHI and its former creditors' committee's objection to JP Morgan's proofs of claim that covered its clearance-related extensions of credit both against LBHI and against LBI. The principal issue raised in that objection is whether JP Morgan liquidated the securities collateral posted by LBI in a commercially reasonable matter. As reflected in our materials, Your Honor, we're prepared to vigorously contest that portion of the objection. We feel JP Morgan, in fact, did an exemplary job of liquidating the securities, but that part of the objection, Your Honor, involves a number of issues of disputed fact, which I imagine will be resolved at some point in due course.

THE COURT: What's the time table for that as far as you know?

MR. NOVIKOFF: The -- we are in the process of

discovery on that. I don't -- honestly I don't know the full schedule of that discovery at that moment, but that is in process now.

THE COURT: Does the disposition of the pending procedural motion in any way affect the discovery program that's under way?

MR. NOVIKOFF: What it would do, Your Honor, is what -- is the issue -- there are factual issues which are extraneous, meaning that they are only related to the two objections that we want to strike. Those would have to go through additional discovery, if they are not stricken, otherwise they will be put into the hopper as well. It could extend the schedule, but I don't think that is set one way or the other at the moment.

THE COURT: Okay.

MR. NOVIKOFF: The two objections that I'm referring to, and these are again -- are apart from the commercial reasonableness, is first that the objectors argue that the clearance claim should be reduced by the value that they attribute to the release by Barclay's of the law suit they had brought against Behr Sterns. In addition, they say that post-Petition interest should be disallowed here on an equitable basis. And, we're here today on JP Morgan's Motion to Strike those as legally deficient and under the applicable rules, Your Honor, and case law, they should be stricken if there is no

question of fact or substantial question of law that might allow the objection to succeed and if the Claimant is prejudiced by the inclusion of the objection. In the Coach v. K-Mart case cited in our materials, the District Court for the Southern District of New York recognized that increased litigation time and expenses are types of prejudice that would qualify for Fed.R.Civ.P. 12(f), which we're asking to be adopted in this case.

JP Morgan and the objectors would be particularly prejudiced here, if these objections are not stricken now, because there is substantial extraneous factual disputes that relate solely to these objections. Extensive discovery time, expense, would have to be undertaken to value this law suit that was released by Barclay's against Behr Sterns, and it relates to Behr Sterns' mortgage-related hedge funds. We're talking about a law suit that was settled in 2008, will never be litigated, is totally unrelated to Lehman, and in fact, arose from events that occurred before JP Morgan acquired Behr Sterns. If we were to proceed with the first of the two objections that I referred to, we would have to determine the value of that law suit. That is a whole set of discovery that we would like to avoid.

THE COURT: Why does the number $400 Million Dollars stick in my head?

MR. NOVIKOFF: $400 Million Dollars was the ad

damnum clause in that law suit, it's the amount that the Plaintiff asserted was owed in the law suit.

THE COURT: So the maximum amount that would be involved as to this piece of the puzzle presumably is $400 Million Dollars because it's unlikely that, unless there was an amendment, we're talking about a bigger number.

MR. NOVIKOFF: That's correct, Your Honor. But the issue, of course, would be if you receive a release of a law suit that was totally unresolved, the damage claim was for $400 Million but what was that release actually worth, which would involve and carry into all of the facts and circumstances of that law suit, which are otherwise not before this Court. Similarly, with respect to the post-Petition interest objection, the objectors say that, based on the equities of the case, that should be disallowed and the equity that they are pointing to is that the -- a great deal of the cash collateral posted by LBHI was not applied against the clearance claims, the total of closing under the collateral disposition agreement. We would have to get into something again, otherwise extraneous to the entire matter, what were the facts and circumstances relating to why or why not the collateral was applied when it was applied.

THE COURT: Is there a real disputed issue of fact as to whether JP Morgan Chase was oversecured at relevant times?

MR. NOVIKOFF: Yes.

THE COURT: There is no disputed issue --

MR. NOVIKOFF: No, there is -- there is a disputed issue. We still don't know whether that's true because, in part, that will -- that may depend on Your Honor's rulings on the portions of the adversary proceeding on which you did not grant a motion to dismiss.

THE COURT: So, if hypothetically, 8.6 Billion Dollars, just to pick a number, is removed from the collateral pool, would JP Morgan be over-secured?

MR. NOVIKOFF: Well, even then, Your Honor, we don't know the answer. First, the number now is probably 7.9 Billion, because $700 Million was returned in a separate settlement of the assessment management funds in Highbridge (phonetic). But if 7.9 Million was removed, then we would have the further question of what was the value of the securities that were returned by JP Morgan to Lehman under the collateral disposition agreement, because under the collateral disposition agreement, to the extent that those served as collateral, we need to figure out that value and we'll treat it as a secured creditor to the extent of that value.

THE COURT: Help me with this -- how am I supposed to decide as a preliminary question issues that just in colloquy now you're incapable of answering. In other words, why are you indisputably entitled to post-Petition interest in

a situation where everything is in dispute.

MR. NOVIKOFF: Your Honor, we're not saying we're indisputably entitled to post-Petition interest until a determination can be made that, in fact, we are oversecured within the meaning of 506(b) --

THE COURT: So, is this a hypothetical Motion to Strike or is this an actual Motion to Strike?

MR. NOVIKOFF: This is an actual Motion to Strike, because if Your Honor doesn't cut off the objection that's been made now, which is that you can simply disallow on equitable grounds, we may all be off on a frolic and detour, taking discovery and wasting the -- the resources both of JP Morgan and of the estate in pursuing discovery which is entirely unnecessary.

THE COURT: Why is this even an issue that requires separate discovery? Isn't this either you have the entitlement, which is what you say or you may not have the entitlement, which is what they say, but why does this lead to any incremental cost and expense to either party in terms of the discovery efforts? Isn't that simply a legal argument that could be heard later in the case?

MR. NOVIKOFF: No, Your Honor, because I -- it involves factual issues. It's their position that JP Morgan delayed in applying the cash collateral. It's our position that the reason it was not delayed earlier is they did not want

us to apply the money there and there are -- they did not want us to apply the money and we didn't apply the money as part of a cooperative arrangement that ultimately led to the collateral disposition agreement. And the issue of whether, you know, the delay -- to use that word -- the fact that it wasn't applied to the collateral disposition agreement, the issue of whether this is something that JP Morgan did to, as they say in their Brief, to just run up the tab, was it running up the tab or was something done on a cooperative basis. In fact we were encouraged not to apply the money, should that come into consideration to determine any equitable considerations, if equitable considerations are something that should be considered in this context. Were we would like Your Honor to rule is that the equitable consideration simply don't get into it so we don't have to get into discovery, don't have to get into a great deal of cost, expense, and delay in trying to run all of those issues to ground.

THE COURT: Is that it?

MR. NOVIKOFF: That's it on -- in addressing Your Honor's question.

THE COURT: Okay.

MR. NOVIKOFF: I would like to --

THE COURT: Well maybe this was a wonderfully concise argument. I would applaud you for that.

MR. NOVIKOFF: I -- I can't do it that quickly, Your

Honor.

THE COURT: Okay.

MR. NOVIKOFF: Let me turn to their first point, that is the -- that the clearance claim should be reduced for the value of the settlement with Barclay's. It is their contention that the deficiency claim -- the LBHI deficiency claim -- should be reduced by the asserted value of the settlement, the release of the law suit. That release was incorporated into a settlement agreement dated December 5, 2008, among JP Morgan, Barclay's, and LBI's SIPA Trustee, and that was approved by an Order of Your Honor dated December 22, 2008, in the LBI SIPA proceeding. In that, there was a settlement between JP Morgan and Barclay's, relating to Barclay's failure to roll a 15.8 billion Dollar Repurchasing Agreement and otherwise take other steps necessary to replace JP Morgan's clearance financing of LBI. It had been JP Morgan's position that Barclay's had promised to do those things.

Because of JP Morgan's -- excuse me, because of Barclay's failure to replace the financing, JP Morgan had to use an army of traders and other personnel to generate more than 19 Billion of sales proceeds and other collections from the securities collateral posted by LBI, for which JP Morgan did not collect any commissions from Lehman as it acknowledged by the objectors in the objection. JP Morgan incurred

substantial fees and expenses to recover on the claims. They incurred substantial fees and expenses to defend against Lehman's efforts to avoid and challenge JP Morgan's claims, liens, and collection efforts, including this objection and it will bear the shortfall, which Your Honor referred to, if JP Morgan's ultimate recovery on the clearance claims, if there is in fact a shortfall.

At the time of the settlement agreement, however, in 2008, the extent of JP Morgan's losses and expenses was unknown and, indeed, is still unknown. But notwithstanding that uncertainty, JP Morgan/Barclay's, decided to settle their disputes through this two-way JP Morgan's/Barclay's settlement included in that separate, included in that settlement agreement. So in exchange for JP Morgan's release of each claims against Barclay's for its failure to roll the 15.8 Repo and otherwise replace the clearance financing, Barclay's released its unrelated law suit against Behr Sterns with respect to the Behr Sterns hedge funds. And just as the amount of the losses sustained by JP Morgan was unknown at that time, the value of the law suit was also unknown at that time and also still remains unknown and by this Motion to Strike, we are hoping to avoid the necessity or trying to figure out the value of that law suit which is otherwise extraneous to this objection. So sophisticated parties like JP Morgan Barclay's often enter into settlements where the facts are unknown, but

in doing so, they take on some very important risks. So JP Morgan accepted the risk that when additional facts where known, it might turn out that it was undercompensated, so if in fact, JP Morgan ends up underpaid by a huge amount here, then in retrospect, it may turn out to have been a very unfortunate settlement from JP Morgan's perspective.

On the other hand, Barclay's accepted the risk that when additional facts were known, it might turn out to have paid too much. Maybe JP Morgan suffered no shortfall and ran up very little in the way of expenses. They each took on those risks and move forward. People settle and move on.

Lehman, however, accepted no such risk in either direction. LBHI was simply unaffected by this settlement and had no role in this settlement. It was not a party. The Lehman estates and the amounts available for other creditors were in no way diminished by the settlement between JP Morgan and Barclay's. LBHI wasn't a party and LBHI contributed nothing to the settlement. JP Morgan alone contributed valuable claims against Barclay's as part of the settlement and JP Morgan alone accepted the risk that it was being undercompensated as part of the deal. This was really a bilateral settlement transaction. It was included in the settlement agreement to which the LBI Trustee was a party, but the LBI Trustee was a party to another aspect of it, which I'll discuss in a moment, was not involved in portions of the

settlement agreement on this transaction.

But even though LBHI had no role in this, the objectors now audaciously now argue that LBHI not JP Morgan is entitled to the value that JP Morgan received under the settlement. According to the objectors, it's possibly, although certainly not known at this time as Your Honor discussed, that JP Morgan might ultimately be fully paid by Lehman on its clearance-related claims. So objectors say that the value of the law suit released by Barclay's, whatever that may be, is an added recovery to JP Morgan and JP Morgan can't get a double recovery, even though it doesn't have any effect whatsoever on the Lehman estates. Therefore, according to the objectors' argument, LBI should have its obligation to JP Morgan reduced by the amount of any potential excess recovery that JP Morgan got from Barclay's, even though such recovery would have come solely from Barclay's. LBHI had no role in it, JP Morgan obtained the recovery by giving up valuable rights and taking on substantial risks and that any reduction of that type would simply be a total windfall to LBHI.

Now, we don't dispute that a creditor cannot receive a double payment on its claim from a debtor, but here there is no chance. I repeat, no chance, that Lehman, LBHI, and LBI will be required to pay more than their contractual obligation. The potential for JP Morgan to recover more, whatever that potential is, is to recover more, it's -- the -- the credit

recovery will come from Barclay's and it exists solely because JP Morgan took the risk that it might be undercompensated. It also took the risk or Barclay's took the risk that it might be overcompensated, but the only potential exists because JP Morgan took that risk on of undercompensation by settling before the full extent of its losses were ascertainable. Had JP Morgan and Barclay's actually known the full amount that JP Morgan's losses and expenses at the time they entered into the settlement, there is no way that Barclay's would have agreed to pay JP Morgan more than the amount of its losses. Again, it just points out that the only reason that this exists is because JP Morgan took on the risk of settling early back in 2008, and seeing -- and taking on the risk that it could be undercompensated. So therefore the possibility that in hindsight JP Morgan might recover from its settlement with Barclay's more than its losses and expenses exists only because it took on that risk of undercompensation.

Now Chapter 11 itself contemplates a similar situation in which a creditor can be ultimately overcompensated in hindsight for taking on a risk of being undercompensated. So, for example, while it didn't happen actually in this Chapter 11 case, it happens in a lot of other Chapter 11 cases in which Your Honor was involved, equity and other property is distributed to creditors, and in a cram-down case, is valued as of the effective date of the plan under Section 1129(b)2. So

years after confirmation, it might turn out that the value of the equities increased to the point where the senior creditor actually receives more than the original amount of its claim, so even if that valuation of the equity was a result of a cram-down which caused junior creditors to receive nothing, they don't get an adjustment years later because now the equities become more valuable, and there is no refund back to the estate. And I cite -- refer Your Honor to the PWS Holding case, cited in our materials. The reason the senior creditor gets to keep this potential greater recovery is because it took on the risk that equity it received might in fact hopefully turn out to be less. That's the nature of it.

In Chapter 11, just in settlements, you settle and you move on, and that's what we do.

We could have drafted the settlement agreement to eliminate the possibility of overcompensation without any effect on the Lehman estate, so JP Morgan could have agreed, if it ever got an excess amount, to simply return it to Barclay's or Barclay's could have been subrogated to JP Morgan's claims to the extent that JP Morgan had actually been fully paid out. We didn't include provisions of that sort, maybe they should have been included; they were not included, but had they been included, the objectors had what -- would now have no argument at all, because there would be no possibility that JP Morgan would receive more than full recovery on its claims, but those

provisions would have had no effect on the estate. It just shows that that, what we are talking about here is simply a bilateral resolution between Barclay's and Lehman and the estate should not now --

THE COURT: You mean a bilateral between Barclays and JPMorgan?

MR. NOVIKOFF: Yes, I misspoke, Your Honor. Thank you. Yes, between Barclays and JPMorgan.

THE COURT: Now, the parties to the applicable settlement agreements included: Barclays, JPMorgan, LBI --

MR. NOVIKOFF: And LBI.

THE COURT: Was LBHI involved at all?

MR. NOVIKOFF: LBHI was in court.

THE COURT: Yes, but were they a signatory to the agreement?

MR. NOVIKOFF: They were not a signatory to the agreement, but, Your Honor's order says that the approval of the agreement is binding in the Chapter 11 cases and related cases.

THE COURT: Well, don't you have an optical problem, of sorts, though?

I mean this is a very dense and complicated fact pattern. And JPMorgan is a very significant financial player. If you made what turns out in retrospect to have been a fabulous deal and you end up profiting on the Lehman

settlement, I think it looks bad. I'm telling you I think it looks bad. And I think it's going to look bad to creditors and observers who are looking from outside into this case. You're making a very reasoned, but highly technical argument at the beginning of a process and before I have access to all the background information that entered into the settlement.

I know a lot about this case. But a lot of what I know is superficial because it's what's presented in Court. All that hard work that's done outside, it's presented, it's explained, it's approved; or not, as the case may be. And here we're talking about something that occurred during the hot and heavy, early days of the case. And if you made a deal, that in retrospect, was hugely advantageous to JPMorgan, you're basically asking me today to declare that the estate gets no credit, under any theory, for the bilateral aspects of the agreement between JPMorgan and Barclays.

Why should I do that now?

MR. NOVIKOFF: Well, actually, Your Honor, it's our position that you did it in December of 2008.

THE COURT: Okay. I'm not sure I knew I did it, and you may be right but that's a legal consequence to be drawing from it, but I'm certainly not prepared to do that today.

If you have a good argument, you can make that good argument a year from now, or whenever this is trial-ready. I don't understand why I should be, in effect, cutting you free

of this potential exposure now, just because it's good for JPMorgan.

MR. NOVIKOFF: Well, it's good for the estate also, Your Honor.

THE COURT: I can't believe it is because they're telling me they want very much to be able to have this little "got-ya" for you.

MR. NOVIKOFF: If, a year from now, Your Honor determines that, you know, JPMorgan was right all along when I go through the careful analysis, they're right as a matter of law, then we will have, at that point, simply wasted a great deal of time and expense. A lot of expense, both JPMorgan and the estate, in trying to come to -- no, development of all of the facts and circumstances behind a lawsuit that otherwise has nothing to do with the Lehman case.

THE COURT: It doesn't seem like that big of a deal to me, frankly, Mr. Novikoff. We know it's no more than $400 million. We know that financial advisors and lawyers handicap the value of litigation all the time. There may be some agreement. I suspect that sophisticated lawyers with some financial advisors sitting in a room could figure out the fair value of that case in 3 hours. At least in a range. So, let's just say that's done. Is this really that big of a deal, given all the other huge issues that will occupy the parties over the next however many months? Because it doesn't seem like that

big of a deal to me. Tell me why I'm wrong.

MR. NOVIKOFF: Your Honor, this is a case where there, frankly, was not a great deal of factual development. It is -- $400 million is still a lot of money to some people. I understand in the context of Lehman, it's not the biggest amount in the world, but even to an institution like JPMorgan that's a lot of money. And I think it's going to involve a lot more effort than Your Honor is attributing to it to get to --

THE COURT: Let's just say that a range of values. We know it's probably no more than $400 million --

MR. NOVIKOFF: Uh huh.

THE COURT: -- and we know it's more than zero. So, it's some number -- no offense, but, so what. How much time can parties actually spend pricing that imponderable? It's not worth that much time and effort. It's just some number. And no one's going to know for sure what that number is. So, let's just say it's a black box, with a question mark in it --

MR. NOVIKOFF: Okay.

THE COURT: -- Why should anybody spend significant time focused on that black box? It becomes, potentially, a credit against your claim. If it ever does become a credit against your claim, then we can spend a lot of time trying to figure out what it is. But why do we need to spend time now doing that?

MR. NOVIKOFF: Well, Your Honor, if what we can do

is put off the discovery on that until we have to figure out whether we actually need to take that discover. That's something I think, you know, would be interesting to us. But we don't want to engage in the discovery before we find out that it's actually something that's going to be meaningful.

THE COURT: I think the parties might reasonably talk about that. Because it doesn't seem to me that it's worth spending a whole lot of time trying to figure out what that is. It's some number.

MR. NOVIKOFF: Uh huh.

THE COURT: It's some number that presumably experts could put a range on. Why anybody should spend a lot of time now trying to figure that out, eludes me. So I don't -- I guess what I'm telling you is, I don't get why this is such a big deal.

MR. NOVIKOFF: Well --

THE COURT: Why this piece of it is such a big deal.

MR. NOVIKOFF: -- because, Your Honor, I think without this motion to strike and having brought this attention to Your Honor, and you making that suggestion, I think we would have had to have go through that discover. It's expensive, time consuming and distracting, and otherwise extraneous to this case. We do think -- and the reason we brought it now -- is we think, as a matter of law, regardless of what the number is and regardless of what JPMorgan's recovery ultimately is,

LBHI is not entitled to a credit for it. Period. And I understand that other creditors may take losses on this case and somebody's going to say, gee, maybe it doesn't look quite right if JPMorgan somehow received a recovery greater. It's not going to appear that way because nobody will ever know, in that circumstance, what the value of that lawsuit would be. We brought it now because we think that as matter of law, Your Honor can decide it. But the purpose of bringing it up now, rather than a year from now, Your Honor is right. It was to avoid -- the prejudice we are seeking to avoid is the cost of this discovery. If the discovery can be put off and Your Honor want to -- would prefer to decide this issue later on, that's something that I think we can certainly take up.

THE COURT: Okay.

MR. NOVIKOFF: With that, let me move on to the post-petition interest point.

As Your Honor knows, Bankruptcy Code, Section 506(b), states "to the extent that a secured claim is secured by collateral having a value in excess of the pre-petition claim" -- and I quote -- "there shall be allowed to the holder of such claim, interest on such claim" -- close quote. The United States Supreme Court in Ron Pair said that the secured creditors right to post-petition interest is unqualified. The Supreme Court in Ron Pair describes Section 506(b) as a contrary standard to pre-code cases such as Vanston Bondholders

Protective Committee v. Green that weigh equitable considerations in determining whether to allow post-petition interest.

Well, our position is that shall means shall. And the objector's position is that Vanston should be the law. They assert that JPMorgan's entitlement to post-petition interest should be denied based on their review of the equities in the situation. So the objector's have grasped onto some language in Ron Pair, in that case The Supreme Court noted that the plain language of Section 506(b) entitling an oversecured creditor post-petition interest should be conclusive. But The Supreme Court -- quoting from language in prior Supreme Court cases, needed to have a narrow escape clause to avoid the absurd, unintended results from a straight-forward application of statutory language and included language, and I quote "except in the rare cases in which the literal application of a statute would presult a result, which produce (phonetic 12.15.20) a result demonstratively at odds with the intention of the drafters" -- so, the objector's assert that this is such a rare case because JPMorgan was secured by cash in its' possession and this allowed the bank to use the cash and generate profits from that cash. But, as Your Honor knows, most cases involving a bank as a secured creditor, which is probably most bankruptcy cases, involves some cash collateral. Any time that a bank has a security interest in a cash deposit

account, or even settle-off rights in a deposit account, for that matter, the bank has use of the funds and can generate profits from those funds. So, there's no rarity here at all. Creating an exception to 506(b)'s entitlement to post-petition interest to the extent that claims are secured by cash would be a massive and totally unexpected change in the law, with enormous commercial and financial consequences. This is not a rarity. What they are asking for would put them in the debtor's lawyers hall of fame. Such a change would be totally unjustifiable.

THE COURT: Let me ask you a question that occurs to me as you are presenting this argument.

Does the entitlement to post-petition interest carry with it an entitlement to a priority distribution with respect to that interest? In other words, just because the interest accrues, does that mean that it's payable; could it also be subordinated? If a creditor engaged in inequitable conduct of some sort, it would seem to me to be within the court's power to allow the interest but to subordinate it to the point that it never gets paid.

MR. NOVIKOFF: I would expect, Your Honor, that if a secured claim was equitably subordinated that both the principal and interest, and presumably post-petition interest, could be subject to subordination. It's pretty unusual, but --

THE COURT: It could happen.

MR. NOVIKOFF: -- but it could happen. 506(b) deals with allowance, it does not do -- it does not create, so far at least as I'm aware, an immunity against equitable subordination under Section 510.

THE COURT: Well, there are a whole bunch of legal issues that are pending, both in connection with this objection to claim and in connection with the litigation against JPMorgan brought by the estate, that conceivably could give rise to some findings. Just as a theoretical proposition that would suggest that you shouldn't get the interest. Is your, what I'll call preemptive objection, one that goes simply to whether or not the interest is to be calculated under 506(b) or does it go to entitlement to retain the accrued interest?

MR. NOVIKOFF: Your Honor, I don't believe that we are arguing that the post-petition interest has a higher priority than the pre-petition claim. So, to the extent that they would all be subject to equitable subordination, that would be the case. What we are saying though, is that as a matter of law we are entitled to the allowance of the claim under 506(b) and we'd like the objection saying that equitable considerations can cut off the allowance to be stricken, so we don't have to go through, again, the discovery and the further distraction expense of dealing with discovery relating to the facts underlying the equitable considerations to which the objector's point.

THE COURT: I'm confused again as to the discovery burden associated with something that seems to be a mere calculation.

MR. NOVIKOFF: Your Honor, this is -- I don't believe this is a mere calculation. The objector's point out, correctly, that much of the LBHI cash collateral was not applied against the debt until -- to the clearance debt, until the closing under the collateral disposition agreement. We don't disagree that that is, in fact, true. They say that fact -- equitable considerations underlying that fact should disallow the interest. We say, if we're going to get into those equitable considerations, then we need to know all of the facts as to why, in fact, the money was not applied until that time. And we -- if we had to do it, we would prove that the principle reason it wasn't applied is because they didn't want us to apply it and that that should enter into Your Honor's considerations. So that's going to get into a lot of discovery, which otherwise is irrelevant to anything going on in this case as to what was happening, what the discussions were about that cash, what the discussions were about the collateral disposition agreement, what the parties understood and why in fact it wasn't paid. It'll also require then, for example, to into issues where they would have to reconcile their position. For example, why they say here there was something wrong with the fact that JPMorgan did not apply the

LBHI cash collateral in -- against the clearance debt, while which Your Honor knows in the adversary proceeding, they say that JPMorgan violated the automatic stay, when it applied the same type of cash collateral against derivatives claims. So, we've got a huge number of issues which we're going to have to get into to and it'll cost money, both to JPMorgan and the estate, to get into, unless that part is stricken. You're right, at the end of the day, if we -- if the $280 million of post-petition interest at stake is allowed as a claim, the equitable subordination claim in the adversary proceeding might still move that down to a subordinated claim. I'm not trying to say that that's not in it, but the equitable issues there are totally different equitable issues, as Your Honor knows.

THE COURT: Let's just say, for the sake of discussion, that I agreed with you and I struck off that part of the objection that relates to the calculation of post-petition interest, would that, in fact, end the discovery with respect to your conduct in connection with the collateral disposition agreement, because isn't your conduct, all of your conduct, relevant to the objection that would remain? In other words, I don't understand how granting this motion to strike actually limits the discovery. Because it seems to me that everything you did reflects on everything that you did. It's all there. It can't -- I don't see how you parse it.

MR. NOVIKOFF: Your Honor, I don't think there's any

allegations in the adversary proceeding; that anything that JPMorgan or the parties who negotiated the collateral disposition agreement did in the period -- and we're talking about a period probably starting December of 2008 and stretching into March of 2010, I don't know that anybody is raising an issue that any of that conduct has anything to do with the equitable subordination issues and the adversary proceeding. I don't think there's anything in the complaint that says that. I don't think anybody suggested that any of those issues are coming up in discovery and I've never understood the objectors to state that. They can correct me, but I don't think those issues are relevant to anything else, with all respect.

THE COURT: Well, What I'm trying to get at, to be simplistic about it, is -- does granting the motion to strike actually change the discovery associated with this objection? It's not clear to me that it does.

MR. NOVIKOFF: Well, it's -- honestly, it's -- I'm closer to it than Your Honor. It's my understanding is -- the answer to your question is just, yes.

THE COURT: Okay, well, I'll ask the same --

MR. NOVIKOFF: That discovery would then be off the table.

THE COURT: -- I'll ask the same question of the estate.

MR. NOVIKOFF: Okay.

Now, I just wanted to point -- did the key case cited by the objectors, which is the 7th Circuit's decision, Lapiana, contains an excellent discussion of this relationship between 506(b), traditional defenses and equitable considerations, there the bankruptcy court said that the creditor forfeited its' right to post-petition interest because it had delayed in collecting and applying proceeds of its' collateral. Not that dissimilar from what's being alleged here. But Judge Posner, in the 7th Circuit, recognized that traditional defenses like estoppel or statute of limitations might act as a defense against interest. But then he went on to say "we deprecate flaccid invocations of equity and bankruptcy proceedings. Creditors have rights; among them the right of oversecured creditors to post-petition interest; and bankruptcy judges are not empowered to dissolve rights in the name of equity. Flexible interpretation designed to allow the judicial interpolation of judicial defenses in a statute silent on defenses is one thing, standardless decision making in the name of equity is another" -- it then goes on, says -- "if 506(b) were read merely to authorize the bankruptcy judge to award post-petition interest as a matter of grace, secured creditors would lack a clear idea of what their rights would be if the debtor went broke. It would complicate the law needlessly by requiring a searching, and often inconclusive, inquiry into the

relative fault of a debtor and creditor" -- this is exactly that searching inquiry.

THE COURT: Okay. It's always good to end with a Posner quote.

MR. NOVIKOFF: Thank you, Your Honor.

MS. TAGGART: Good afternoon, Your Honor. Erica Taggart with Quinn Emanuel Urquhart & Sullivan on behalf of the committee. I'm going to be addressing the portion of the argument about the Barclays issue and then my colleague, Joe Pizzurro, will be addressing the post-petition interest.

I want to start by discussing very briefly the law because I understand Your Honor saying that the equities wouldn't look very good if JPMorgan were to profit off of the estate. And I understand Mr. Novikoff's position that as a legal matter, though, since it doesn't hurt Lehman then it's okay though, under a legal matter, for JPMorgan to get the same damages from Barclays as from Lehman and that that is just a risk that a creditor is allowed to take; but that doesn't comport with the law. There is a rule that the 2nd Circuit follows, it's called The One Satisfaction Rule and it says that a plaintiff is entitled to only one satisfaction for each injury. This isn't just one satisfaction from one party; it's one satisfaction for many parties, for many causes of action. The 2nd Circuit announced that rule in Singer v. Olympia Brewing Co., 878 F.2d 596. It's been followed consistently,

such as in Gerber v. MTC Electronic Technologies 329 F.3d 297. In there, the 2nd Circuit held a judgment must be reduced by at least the amount that a prior settlement had with -- that the plaintiff had with another party and is allocated to the common damages. It -- there are a number of citations also in our brief; I'll only mention a few more. That in the -- in re Refco Case and in the Sparron Co v. Lawlor (12.27.34). What's important is that even when a plaintiff has recovered for common damages from a party that is not in this case, it needs to be deducted or else there's a chance of a double-recovery. In this case it appears that Mr. Novikoff is conceding that at least some of the damages that it was asserting against Barclays relate to the same clearance advances that it has now, and as a matter of law, it has to have a deduction now. Lehman is entitled to a deduction for whatever value JPMorgan did have in its' settlement against Barclays to the extent as the same damages. And -- in JPMorgan's briefs it appeared to take an issue whether those damages were the same, I think Mr. Novikoff is now conceding that it is going for the clearing advances. I just want to point out two quotes that are also in our briefs, but I think make this crystal clear. And one is actually from Mr. Novikoff himself, who testified recently at deposition, quote "part of the damages that would have been asserted against Barclays was, in essence, the damages suffered by JPMorgan as a result of Barclays failure to refinance the

portfolio, the, excuse me, the clearance advances" -- also Steve Cutler, General Counsel for JPMorgan, testified at deposition, and this was in connection negotiations for the December settlement agreement, quote "the sum and substance, I think, of the JPMorgan position, communicated at those meetings" -- those were the meetings among Barclays, JPMorgan, actually the Fed Bank of New York -- "was that we, JPMorgan, believed that it was in agreement to take JPMorgan out of its' financing position by Barclays and that didn't happen. We ended up with fail financing; we ended up with repo-financing, that we shouldn't have landed up with" -- so, we are following squarely within the one satisfaction rule, there has been a prior settlement. That prior settlement had at least some consideration for common damages that are being asserted now against Lehman and there needs to be an allowance for those common damages.

There's another question then that Your Honor and Mr. Novikoff raise and that is, okay, what is the appropriate amount of the deduction? Let me suggest that this doesn't need to be resolved on a motion to strike. We have had a -- we have a legally defensible claim and it is clear again that at least some, and I think not an insignificant amount of value, was attributed to the settlement for the common damages. But I'll spend just a brief amount talking about what those are. The first part is easy, at least easy as a theoretical matter, and

then we'll talk about discovery. And that is that Barclays dropped the Bear Sterns lawsuit because of the damages that JPMorgan was associating with the clearing advances. In the fall of 2008, JPMorgan blamed Barclays, and only Barclays, for leaving JPMorgan with financing that at that time it didn't know if it was going to have a deficiency, but if it did, it was blaming it on Barclays for not taking over all the financing in the asset process agreement. So, whatever the value was to JPMorgan of that lawsuit, should be deducted against its' clearing claim. Mr. Novikoff raises an issue that is really a discovery issue, saying but there's just so much discovery why get into it. Let me suggest that although $400 million is not a lot of -- as he says it, it might not be a lot of money in the Lehman case, I think it's probably worth some discovery. But, I would also agree with Your Honor that it doesn't mean we need to litigate the entire Bear Sterns case. There's already been some testimony and discovery where Barclays' negotiators have said what the value they thought was associated with the case and it includes the fact that the compensatory damages sought were 400 million plus punitive. And the counsel of Barclays says, banks don't sue banks lightly, and it has some value to JPMorgan and I think there probably could be a resolution along the lines that Your Honor thinks where we'd get advisors to take, you know, maybe handicap the chances that there would be recovery on those

damages to come up with a non-insignificant amount of money.

There is though, one other part of potential damages that I understand there's a dispute but I don't think needs to be resolved on this motion to strike. And that is, is there anything else of the December settlement that JP -- that Lehman did not get credit for? Because although the Bear Sterns lawsuit with that agreement to dismiss happened in September, the issue, and I think you know a little bit about it of this dispute with Barclays and JPMorgan over a $7 billion. Throughout all those negotiations, too, JPMorgan said it was entitled to keep the $7 billion. In part, because of this alleged fraud that Barclays had made upon it. And there is a compromise that is reached, as Mr. Novikoff says, bilaterally between JPMorgan and Barclays, resulting in a payment from JPMorgan in securities and also cash, not worth $7 billion to resolve that. JPMorgan says in its' reply that "Lehman, don't worry, you got all the credit that you were supposed to get for that settlement and you go dollar for dollar credit for the $7 billion" -- I would just suggest that it's a bit premature to decide that. We have not said -- heard, for example, and gotten discovery on, where JPMorgan got the cash payments that was given to Barclays, it could be that they liquidated securities that were not supposed go over. As part of this general clearing claim we will be getting a further accounting of how the clearing claim broke down and I would just suggest,

at this point, to the extent that there is additional consideration that has not been given credit to Lehman Brothers, that was gotten from Barclays about common damages, we would be entitled to that. I can't tell on the record now whether that is any more than the Bear Sterns lawsuit. But we should be entitled to discovery, in part because of that actual Steve Cutler quote about the -- JPMorgan's position being that they caused the clearing advances. That was in negotiations for the December settlement agreement and it's just not clear that there was (wasn't? 12.33.29) additional compensation. But, at the very least, we have gotten past the standard for motion to strike, which is a very high one, as you know. There has to be no question of fact to allow the defense to succeed. No substantial question of law to have allowed the defense to succeed and the plaintiff must be prejudice by inclusion of the defense. We're just saying, at this point, that JPMorgan is only entitled to one satisfaction of its' claim, whether it be from Barclays or Lehman, and so, to the extent there has been compensation for those single damages. We will resolve it later but it should be taken away from the eventual claim.

Thank Your Honor.

THE COURT: Thank you.

MR. PIZZURRO: Good afternoon, Your Honor. Joseph Pizzurro, Curtis Mallet-Prevost Colt & Mosle for the Lehman Estate. And I'm going to address that portion of the motion to

strike that deals with the interest.

Let me make something clear from the outset. I want to clarify that as is in our papers, the argument that we have made here is not simply based on equitable principles, although it, in part, is and I will address that. But, as we have said in our papers, the conduct of JPMorgan in these circumstances as we've alleged it, amounts to JPMorgan having paid itself on these claims. Indeed, prior to the time the claims even arose. And that, therefore, 506(b) simply does not apply at all. And this is not a case -- the ordinary case where a bank is holding onto cash as collateral in a liened account. More technically correct, has a security interest in the account. This is a case where JPMorgan, having had l lien on an account, swept those funds out of that account, put those funds into its' own general ledger account and, as we have alleged, in the collateral case, as a result, lost its' lien and lost its' status as a secured creditor. And that's a claim which, Your Honor, has recently held that we are entitled to pursue and develop the facts on that, and survives as a matter of law. Now, we would contend, Your Honor, that if there's no logical consistency between a finding that 506(b) would apply to JPMorgan in these circumstances, and the possibility that JPMorgan lost its' lien as a result of its' conduct in sweeping those funds out of the account. Because once those funds left the account as we have alleged, and as Your Honor has held that

we have an opportunity to prove, they were no longer collateral and they were no longer proceeds of collateral, if we're correct. And if they weren't collateral, then they could only be either our money, which clearly that was not the case or JPMorgan took the funds, treated those funds as its' own money, effectively paying itself before a claim even arose. Before exposures even existed. Before there was an issue with whether they would've violated the automatic stay or not because the claim had not -- there had been no claim filed, no bankruptcy had been filed. Now that is a set of facts which is imbedded in the claims objection with respect to the entitlements of the interest, as it is embedded in the claim that we've asserted in the collateral case. And to grant a motion to strike at this stage is clearly unwarranted as a matter of law. Let me point out that in the papers, JPMorgan has never refuted the assertion that they effectively treated this money as their own once they swept it out of that account. So, they had the money. They paid themselves, or put themselves into a position where they would be paid. There was no claim, there is not entitlement to interest. 506(b) simply does not apply as a matter of law. But let's assume, and get very quickly to the equitable argument, that 506(b) does apply and they have an entitlement, potentially as an oversecured creditor. First of all, as we did point out in our papers, we totally agree with Your Honor, it's not ripe for decision now, they may or may not

end up having oversecured status, which means they may or may not have a right to interest or a portion of the interest that they are claiming. More that that though, we're troubled by the argument that JPMorgan makes, based on The Supreme Court decision in Ron Pair. Because JPMorgan suggests that the language of The Supreme Court where it held that the right of an oversecured creditor to pre-petition interest is unqualified. It's tantamount to The Supreme Court having held that it is absolute and that was not anything that the Court was talking about or held. The issue before the Court in Ron Pair was whether or not a creditor that was oversecured because it had a non-consentual lien was entitled to pre-petition interest, and that question hinged on whether or not the right to interest, in the sentence of the statute, was qualified by the language dealing with "reasonable, fees, costs or charges provided for under the agreement under which such claims arose" -- and what The Supreme Court held in parsing the statute, doing the judicial equivalent of diagramming the sentence, was to say because of the placement of the comma in the sentence, it was clear that the entitlement to pre-judgment interest was unqualified by this subordinate clause. Not unqualified in the terms that it was absolute, not unqualified in terms that equitable considerations could not be taken into account as to whether and the extent to which interest is allowed. It's simply unqualified by the existence of an agreement, and that

had to be decided because, of course, in a non-consentual lien situation, if the entitlement to interest was qualified by agreement, in the absence of an agreement, that oversecured creditor is not entitled to interest. That's the law issue that The Supreme Court held and that's all that Ron Pair stands for. And -- the cases that come after it, including the Lapiana case, Judge Posner's decision, recognized that there are circumstances in which equitable considerations can result in the tolling or elimination of an oversecured creditor's right to interest, pre-petitioned interest. And we've asserted here, Your Honor, that the circumstances of this case, where JPMorgan waited 18 months, holding onto that cash, having full use of the property as its' own, being able to make money on Lehman's money and yet, charge Lehman's interest is completely inequitable, and there are, as Mr. Novikoff said, there may be fact questions embedded in that, but that's no reason why there ought to be a motion to strike. To argue that they are entitled as a matter of law to their interest, regardless of equitable concerns, is simply not the case. That's not the law.

If Your Honor has any questions.

THE COURT: I don't, thank you.

MR. NOVIKOFF: Can I respond briefly, Your Honor?

THE COURT: Of course.

MR. NOVIKOFF: Thank you.

First, with respect to the Barclay settlement issue, the objectors refer to, in their papers and Ms. Taggart today, to cases in which joint and several obligors are entitled to a credit when another joint and several obligor makes a payment on a debt for which they are all liable. That's the 2nd Circuit Rule, we're not challenging that rule. But Barclays was not joint and severally liable with LBI and LBHI. LBI and LBHI were jointly and severally contractually liable for the debt, the extensions of credit to LBI. But Barclays was only liable for the consequences of its' own breach of its' promise. So, if JPMorgan ultimately sustains a shortfall in recovering from LBI and LBHI, then Barclays, in our view, would have been responsible for that shortfall. That would have been only after LBI and LBHI failed to satisfy their obligations. And so, Barclays liability for the shortfall would be measured by the amount that LBI and LBHI paid, or the value of the collateral that got used, to satisfy that debt. But that doesn't mean that the converse is true. It doesn't mean that settlement value from Barclays to JPMorgan in any way reduces LBI's and LBHI's contractual obligation on their debt. Of course it doesn't. Just as Lehman would not have been entitled to a contribution payment from Barclays because it paid its' contractual debt to JPMorgan. They've twisted it around; this is not a joint & several case, and all those cases that they've cited, in which they have joint tortfeasors challenging

settlements that don't have a proper judgment reduction in it are simply inapposite. This is not a joint and several situation, it flows in one direction, not the other. Also, Ms. Taggart is raising an issue which it's really inconceivable to me exists. But on the evening before -- September 18, the evening before, or possibly the wee hours of the same day, that Your Honor approved the sale of most of LBI's business to Barclays. As Your Honor knows, it was this $45 billion pre-sale of a portfolio of securities to Barclays for $45 billion in cash. As Your Honor, I believe, is aware, before DTTC and Fed Wire closed the evening of the eighteenth, securities valued at roughly $42 billion moved but not the $49 billion, which they thought. So JPMorgan advanced $7 billion and it got put into a cash collateral account for Barclays. So they had roughly $7 billion valued of securities, which still remained with LBI and that morning the $7 billion of cash also moved in. That's the disputed cash. It's recited in the settlement agreement. The estate has had materials showing the deduction of that cash, literally, for years. I don't think there's any dispute from anybody about what that cash is and for a dispute to be raised at this point strikes me a very odd and really questionable. And that's what the dispute was that was settled; the $7 billion of cash remained with LBI and got applied to the debt; and the securities, which were supposed to have been transferred over, got transferred over or that

because some of them had been liquidated, there was a cash adjustment that also went over. That was the deal. That was the deal, wasn't more complicated than that, there's not a lot of mystery about the $7 billion. It was cash that was advanced and the next morning moved in, and they got the full credit for the $7 billion so I don't know that there's some other issue lurking out there.

I wanted to also respond to Mr. Pizzurro's argument on 506(b). The position that JPMorgan paid itself with the cash sweep is totally inconsistent with the position that the objectors have taken, although in this case as plaintiffs, same two parties, in the adversary proceeding. In the adversary proceeding, as Your Honor knows, in one of the -- a couple of the counts, which were -- have not been dismissed, they argued that as a result of the cash sweep, the cash was moved into a collateral account but JPMorgan did not, either have a security interest in, or was not perfected in that account and, as a result, it their position, as I understand it in the adversary proceeding, that JPMorgan lost it's lien and, therefore the money should be returned to LBHI. Not that it should be treated as paid, but that it should be treated as returned. They really have to come up with what is their story on this. I understand people can allege or can assert different legal theories, but they really shouldn't be asserting different factual theories. And either we paid ourselves or we didn't

pay ourselves. Now, with respect to The Supreme Court's decision in Ron Pair, very important case. I would have to tell Mr. Pizzurro what I often have to tell younger lawyers, and sometimes not so young lawyers in my forum --

THE COURT: Apparently, you're telling a not-so-young lawyer something right now.

MR. NOVIKOFF: I hope he's younger than me, I'm not really sure. We'll discuss that later. But my advice is, and it's free and I won't charge you for it, is keep reading. After the unqualified language, the Court goes into discussion and it talks about the Vanston case and it says that 506(b) is a contrary standard and Vanston's no longer good law; you don't apply equitable considerations anymore in 506(b) cases. So, while I understand his point about the use of the term unqualified, Supreme Court keeps on talking and it's there. And in the Lapiana case, Judge Posner did acknowledge that traditional defense is continued to apply to interest and we're not disagreeing with that. But the objectors here have not asserted that any traditional defense applies and I don't think they can. They certainly haven't tried and what they are trying to do is come up with an equitable consideration, which Judge Posner, I'm going to ask -- end with another Judge Posner quote. He referred to --

THE COURT: A short one, I hope.

MR. NOVIKOFF: Excuse me?

THE COURT: A very short one.

MR. NOVIKOFF: It's a very short one. He referred to it as a "watered-down version of equitable estoppel" -- that's what their trying to do and he wouldn't accept it and Your Honor shouldn't accept it.

THE COURT: Okay.

MR. NOVIKOFF: Thank you, Your Honor.

THE COURT: I'm going to take this under advisement and thanks for the argument. You'll hear from us when we've made a decision. We're adjourned.

MR. NOVIKOFF: Thank you, Your Honor.

MR. PIZZURRO: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 12:49 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

We, Petra Garthwait, Michelle George, Don Cohen, certify that the foregoing transcript is a true and accurate record of the proceedings.

Petra Garthwait
Digitally signed by Petra Garthwait
DN: cn=Petra Garthwait, o, ou, email=digital1@veritext.com, c=US
Date: 2012.04.30 10:57:43 -04'00'

PETRA GARTHWAIT

Michelle George
Digitally signed by Michelle George
DN: cn=Michelle George, o, ou, email=digital1@veritext.com, c=US
Date: 2012.04.30 11:00:03 -04'00'

MICHELLE GEORGE

Donald Cohen
Digitally signed by Donald Cohen
DN: cn=Donald Cohen, o, ou, email=digital1@veritext.com, c=US
Date: 2012.04.30 11:00:39 -04'00'

DON COHEN

Veritext
200 Old Country Road
Suite 580
Mineola, NY 11501

Date: April 27, 2012